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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
-----x

3 KATHRYN TOWNSEND GRIFFIN, et  
al.,

4 Plaintiffs,

5 v.

17 Civ. 5221 (LLS)

6 EDWARD CHRISTOPHER SHEERAN,  
7 personally known as Ed  
Sheeran, et al.,

8 Defendants.

9 -----x  
10 New York, N.Y.  
11 May 1, 2023  
12 11:05 a.m.

13 Before:

14 HON. LOUIS L. STANTON,

15 District Judge  
16 - and a Jury -

17 APPEARANCES

18 FRANK & ASSOCIATES PC

19 BY: PATRICK RYAN FRANK

KEISHA RICE

KATHERINE VIKER

- and -

20 BEN CRUMP LAW

21 BY: BEN CRUMP

Attorneys for Plaintiffs

22 PRYOR CASHMAN LLP

23 Attorneys for Defendants

24 BY: ILENE SUSAN FARKAS

DONALD S. ZAKARIN

ANDREW MARK GOLDSMITH

BRIAN MAIDA

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1 (Trial resumed; jury present)

2 THE COURT: Welcome back.

3 MS. FARKAS: Your Honor, we'd like to continue with  
4 the examination of Mr. Sheeran.

5 THE COURT: Mr. Sheeran, you're reminded you're still  
6 under oath.

7 THE WITNESS: Yes.

8 EDWARD CHRISTOPHER SHEERAN, resumed.

9 DIRECT EXAMINATION CONTINUED

10 BY MS. FARKAS:

11 Q. Good morning.

12 A. Good morning.

13 Q. Picking up where we left off last week, we were discussing  
14 the basic chord progression in "Thinking Out Loud," both during  
15 the first 24 seconds and after the first 24 seconds of the  
16 song. I think you testified on Thursday that as between you  
17 and Amy Wadge, that Amy was the first to play that basic chord  
18 progression first, correct?

19 A. Yeah.

20 Q. What is the basic chord progression that Amy played?

21 A. May I?

22 Q. If you could tell us first.

23 A. OK. So it's D and then D with an F sharp and then G  
24 with -- I play it with the two notes D and then it's an A.

25 Q. I want to be clear about your testimony from last week.

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1 Dr. Stewart testified that the second chord during the first 24  
2 seconds of "Thinking Out Loud" is not a D with an F sharp, D  
3 over an F sharp minor, but simply an F sharp minor.

4 Is Dr. Stewart's testimony accurate?

5 A. You got that wrong. You're saying it's -- my one is with  
6 an F sharp major. Very big difference between major and minor.  
7 The minor's D and then D with an F sharp and then G and then A.  
8 And what he's saying is D, F sharp minor, G, A7. And there's a  
9 big difference between the two.

10 Q. And how do you know Dr. Stewart is wrong?

11 A. I wrote it and I play it every week, a lot.

12 Q. The basic chord progression in "Thinking Out Loud" that  
13 we've just been talking about, is that the same basic chord  
14 progression that appears in the commercial recording of  
15 "Thinking Out Loud"?

16 A. Yeah, it's the same chord every single time. It would be  
17 really weird to start the song and play different chords and  
18 end on those same cords for three and a half minutes.

19 Q. Are you familiar with the musical term "anticipation"?

20 A. Yes.

21 Q. And what do you understand it to mean?

22 A. If you're playing -- if you're doing it in 4/4, so two,  
23 three, four. Go, one, two, three, four. So it would  
24 anticipate the two and the four just before.

25 Q. And does the chord progression in "Thinking Out Loud"

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1 feature anticipation?

2 A. It does, yes.

3 Q. Prior to writing "Thinking Out Loud," had you written any  
4 other songs with chord progressions that had anticipation in  
5 them?

6 A. Yes.

7 Q. Do you recall the names of any of them?

8 A. I had a song called "Kiss Me" that was on "+". That was  
9 featured on the "Vampire Diaries," a song called "I See Fire"  
10 that was on "The Hobbit: Desolation of Smaug" movie, a song  
11 called "You and I" that was on "+", and I'm sure many, many  
12 before. But in terms of, like, big commercial releases, those  
13 would be the ones people would have heard of.

14 Q. Can you play for us the anticipated chord progression in "I  
15 See Fire"?

16 A. Yeah. So it's like *I see fire inside the mountain ...* so  
17 it's on the two and the four, the one, two, three, four. It's  
18 the anticipation.

19 (Guitar played)

20 Q. And so is what you just demonstrated from "I See Fire" the  
21 anticipation on the second --

22 A. It's the same --

23 Q. -- chord?

24 A. -- same as the chords in "Thinking Out Loud."

25 (Guitar played)

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1 Q. In terms of anticipation?

2 A. In terms of anticipation, yeah. It's not the same chords.

3 Q. After writing "Thinking Out Loud" with Amy, did you create  
4 a commercial recording of the song?

5 A. Yes. I'm not sure in what time period. It would have been  
6 quite soon after, but I went in and recorded the song with Jake  
7 at Sticky Studios, yes.

8 Q. When you say "Jake," who are you refer to?

9 A. Jake Gosling, who was one of the producers on my first  
10 album and one of the producers on my second album.

11 Q. I'd like to discuss the recording process for "Thinking Out  
12 Loud" a little bit.

13 You show up at Sticky Studios. Jake Gosling is there.  
14 Do you recall if anyone else was there?

15 A. Chris Leonard, who plays guitar and bass on the song, he  
16 was there. He's someone I've frequently collaborated with  
17 songwriting and musically. He's played guitar on a lot of my  
18 tracks. And we got Jake's dad, who played piano, and we got  
19 him to play on the song as well. But there was -- yeah, us  
20 four, basically.

21 Q. And do you --

22 A. Sorry. And there would have been an engineer there as  
23 well. I can't remember who that was.

24 Q. Was Amy there?

25 A. Amy wasn't there, no.

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1 Q. Do you recall what happens after you arrive at the studio?

2 A. I'm godfather of Jake's kid, so we probably would have  
3 caught up about his children and -- yeah, I guess, like, caught  
4 up, and then we would have recorded the song. Usually with  
5 songs, if you've written a song in the studio and it all goes  
6 down, anything could happen in any order. But with songs that  
7 you're taking in that are a voice note, usually you go in, I  
8 would record the guitar first and map it out, and then I would  
9 go in and do what we call a scratch vocal, which is basically  
10 not the main vocal, so we have all the parts in the right  
11 places, and then you would produce the song around that,  
12 essentially, and then you would re-vocal it at the end.

13 Q. So specifically talking about "Thinking Out Loud"?

14 A. That would have been the process we did for that, yes.

15 Q. So you would have -- you sang on the commercial recording  
16 and you played guitar?

17 A. I played the guitar on the commercial recording, yeah.  
18 Jake would have done production; Chris would have done lead  
19 guitar, such as the guitar solo; and Jake's dad would have done  
20 piano; and I think Chris did bass as well, but I can't recall  
21 everything in that session.

22 Q. So would it be fair to say that the various people that  
23 you've identified all contributed different parts to the  
24 recording of "Thinking Out Loud"?

25 A. Yeah. But, again, as I say, recording and songwriting is

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1 two very different things. One is someone playing as a session  
2 musician, and another is someone actually writing the song.

3 Q. When did you finish recording "Thinking Out Loud"?

4 A. I don't know.

5 Q. Was it that same day?

6 A. Yeah, it would have been -- we did that song and a song  
7 called "I'm a Mess" that day. So it would have been that day,  
8 but I don't know how long it took. I remember we went out that  
9 evening to a pub nearby and played the song in the pub to just  
10 celebrate that it was -- yeah, it was people in the pub, and we  
11 were just like, "We just recorded a song," and played it. So I  
12 remember we finished it that night and celebrated finishing it.

13 Q. I'd like to show you what's been marked as Defendant's  
14 Exhibit 236 for identification. I'm going to just show you the  
15 opening frame, and I'd like you to identify it for us.

16 A. That -- well, it's not on the main screen. Should I wait  
17 for it to be on main screen?

18 Q. OK.

19 A. Can I identify it? Yes, this is the first shot of my music  
20 video "Thinking Out Loud."

21 Q. Is the music that is playing during this video the same as  
22 the commercially released recording of "Thinking Out Loud"?

23 A. If my memory serves me, the first bit of this music video  
24 is Brittany, the dancer, warming up, whatever, and there's a  
25 bit of soundscape music put underneath that. And then the song

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1 starts, and that is the recorded version of the song, yes.

2 MS. FARKAS: OK. I'd like to show the video, please.

3 Sorry. I'd like to move Exhibit 236 into evidence,  
4 please.

5 MR. FRANK: No objection, your Honor.

6 (Defendant's Exhibit 236 received in evidence)

7 (Video played)

8 BY MS. FARKAS:

9 Q. Going to stop it there, I think.

10 How, if at all, does this video relate to the lyrics  
11 of "Thinking Out Loud"?

12 A. Well, I wanted to make a romantic video because it's a  
13 romantic song. So, yeah, I -- I'm not a dancer. I learned how  
14 to dance for that video. It took a long time. And, yeah, I  
15 wanted to do something that basically reflected the feeling of  
16 the song, I guess, and would be something that people would  
17 watch and then share because they'd be, like, I never knew he  
18 could dance. So it was -- yeah.

19 Q. Who is the woman in the video?

20 A. Brittany, who is a fantastic dancer. She came on tour with  
21 me and her partner Paul. Paul and Brittany both taught me to  
22 dance over the course of about six weeks. And, yeah, it was  
23 really good fun.

24 Q. I'd like to direct your attention now to the questions that  
25 the plaintiff's counsel asked you about a performance in Zurich

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1 in 2014 when you sang some of the lyrics to "Let's Get It On"  
2 during your performance of "Thinking Out Loud." If it's OK,  
3 I'm going to refer to that as the Zurich performance.

4 A. Of course.

5 Q. And before we get into some detail on the Zurich  
6 performance, are you familiar with the term "mashup"?

7 A. Yeah.

8 Q. And can you just explain to the jury generally what your  
9 understanding of that term is.

10 A. Yeah. In my understanding, it's taking one song and  
11 mashing up another song with it. Yeah.

12 Q. Did you consider the Zurich performance to be a mashup?

13 A. Yes.

14 Q. What tour were you on at the time?

15 A. That would have been the tour for my second album "x."

16 Q. And at that point in your career, had you been segueing  
17 from one song to another or mashing up songs in prior  
18 performances?

19 A. Yeah, I'd done that from being a kid. And, yeah, I  
20 think -- when I first started out, my way of making money was  
21 playing weddings on weekends, and you would essentially take a  
22 chord sequence and sing as many popular songs as you could with  
23 the chord sequence at said wedding. But I've been doing it for  
24 years. Most artists do it.

25 Q. And to your knowledge -- I mean, I think you just answered

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1 it -- to your knowledge, is mashing up songs something that's  
2 unique to you?

3 A. No, not at all.

4 Q. How do you decide what songs to use when you're doing one  
5 of these mashups?

6 A. I mean, it could -- I mean, recently I mashed up a Lewis  
7 Capaldi song when I was playing in Glasgow, because he's from  
8 Glasgow. Like, that, you know, creates reaction with an  
9 audience. But sometimes it's based on what the song is about.  
10 So if it's a love song, I might mash it up with another love  
11 song. Sometimes it's just if it has similar chords, I'll mash  
12 it up with a song has similar chords.

13 As I said before, you could mash up "Let It Be" with  
14 "No Woman, No Cry." I mean, they're both two sort of different  
15 songs theme-wise, but they're both really well-known. So you  
16 would sometimes just choose it on whether songs would get a  
17 reaction from the audience.

18 Q. Do you ever take requests?

19 A. Yeah.

20 Q. Do you have an example of when someone suggested a mashup  
21 to you that you ended up performing live?

22 A. Yeah. I mean, I do, like, when you go to do radio promo,  
23 you do, like, these small gigs for fans. And there was one  
24 time where a fan wanted me to play some songs from my debut  
25 album "+". And I said, it's actually interesting, you can play

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1 the whole album over one chord sequence, and I mashed up the  
2 entire album over one chord sequence basically.

3 Q. Now, with respect to the Zurich performance, do you recall  
4 how you got the idea to sing some of the lyrics of "Let's Get  
5 it On" during your performance of "Thinking Out Loud" that  
6 night?

7 A. Not specifically. I'm sure I would have seen someone mash  
8 it up on YouTube. There are mashups of those songs on YouTube  
9 that I would have probably seen.

10 Q. Do you recall what chords you were playing when you sang  
11 some of the words to "Let's Get It on" that night?

12 A. The chords from "Thinking Out Loud."

13 Q. Focusing on your live performances over the past several  
14 years, when you're performing in stadiums, do you typically  
15 perform with a band?

16 A. Not typically. When I played solo from -- I got a thing  
17 called a loop station, which is you can essentially record  
18 things live and then it loops and you build it up as -- it's  
19 basically like building a track live. You would do guitar  
20 first and then you bang the guitar like a drum, do vocals, and  
21 primarily I've done that since I was about 14. On this recent  
22 stadium tour, I have a band joining me on five songs in the  
23 middle.

24 Q. I'd like to show you what has been marked for  
25 identification as Defendant's Exhibit 233.

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1 A. Yeah.

2 Q. Can you see that on your screen?

3 A. I can, yes.

4 Q. Who is that in the video?

5 A. That's me. I think that's me playing in Vegas, and I think  
6 that was around 2015.

7 MS. FARKAS: OK. We'd like to play this video from  
8 the start till about -- well, if there's no objection, we'd  
9 actually just like to move it into evidence. It's Exhibit 233.

10 MR. FRANK: No objection, your Honor.

11 THE COURT: Received. And 236 is also received.

12 (Defendant's Exhibits 233 and 236 received in  
13 evidence)

14 MS. FARKAS: Thank you, your Honor.

15 I'd like to play the video from the start until about  
16 the 1:24 mark.

17 (Video played)

18 BY MS. FARKAS:

19 Q. Mr. Sheeran, is that the loop pedal that's by your feet  
20 you've been talking about?

21 A. Yes. Every go-round I'm adding another loop to it, and it  
22 just builds the track, basically.

23 (Video played)

24 Q. OK. So that was an example of the looping that you were  
25 talking about, correct?

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1 A. Yeah.

2 Q. Now we're going to continue the video, and when we stop the  
3 video again, I want you to tell us what you start singing right  
4 at this point.

5 So let's play until 2:25, please.

6 (Video played)

7 Q. What were you singing during the clip that we just saw?

8 A. "Feeling Good" by Nina Simone.

9 Q. Just going back to the looping that we saw for the first  
10 clip, what song were you playing during -- while you were  
11 looping?

12 A. My song from "The Hobbit," "I See Fire."

13 Q. And whose song is "Feeling Good"?

14 A. Nina Simone's.

15 Q. Are you singing those lyrics over the chord and rhythm of  
16 "I See Fire"?

17 A. Yeah, they're the chords that she would use on "Feeling  
18 Good," the different chords.

19 Q. Now, we're going to fast-forward to 3:07. When we stop the  
20 video, I'd like you to tell us what you start singing around  
21 the 3:12 mark.

22 (Video played)

23 A. That's going into "I See Fire."

24 Q. So in the video that we just watched, you start with a  
25 portion of "I See Fire," then you segue into "Feeling Good,"

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1 then you go back to "I See Fire," is that correct?

2 A. Correct.

3 Q. Did you copy from "Feeling Good" when you wrote "I See  
4 Fire"?

5 A. No.

6 Q. Next I'd like to show you what's been marked for  
7 identification as Defendant's Exhibit 217.

8 Can you see it?

9 A. No.

10 (Video played)

11 A. Yes.

12 Q. And who is that in the video?

13 A. That's me.

14 MS. FARKAS: I'd like to move Defendant's Exhibit 217  
15 into evidence, please.

16 MR. FRANK: No objection, your Honor.

17 THE COURT: Received.

18 (Defendant's Exhibit 217 received in evidence)

19 BY MS. FARKAS:

20 Q. Let's play the video from the start until about 42 seconds,  
21 and then I'm going to ask you what you're playing during the  
22 first 42 seconds of this video.

23 (Video played)

24 Q. What song are you singing there?

25 A. That's a song of mine called "Don't."

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1 Q. Then we're going to move ahead to about 3:07, and we're  
2 going to hit play. When we stop it, I'm going to ask you what  
3 song you're singing there.

4 A. Cool.

5 (Video played)

6 Q. What were you singing there?

7 A. That's going from "Don't" into "Loyal," which is a Chris  
8 Brown and Lil Wayne and French Montana all tied together,  
9 depending on which coast.

10 Q. Now we're going to continue the video at this point, and  
11 when we stop the video again, I'd like you to tell us what you  
12 start singing when this video starts.

13 (Video played)

14 Q. What song were you singing there?

15 A. "No Diggity" by Blackstreet.

16 Q. We're going to continue the video at around 4:22, and when  
17 we stop the video again, I'd like you to tell us what you start  
18 singing at the start of that clip, please.

19 (Video played)

20 Q. And what were you singing during that clip?

21 A. It goes from "The Next Episode" back into Blackstreet.

22 Q. Now, we're going to fast-forward again to 5:27, when we  
23 stop I'd like you to tell us what you're playing in this clip.

24 (Video played)

25 Q. What were you singing during that clip?

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1 A. I was into a song of mine named "Nina." That was on the  
2 "x" as well.

3 Q. In summing up, what is this video that we just saw?

4 A. This is me playing -- it's a venue in Ireland called  
5 Doyle's, and they did a night called The Ruby Sessions. And  
6 this is me playing The Ruby Sessions in Dublin. I can't  
7 remember why I was in Dublin, but yeah. And I'm mashing up a  
8 lot of songs over my song "Don't."

9 Q. Did you copy from "Loyal" when you wrote "Don't"?

10 A. No, I don't even think it was out at the time.

11 Q. Did you copy from "No Diggity" when you wrote "Don't"?

12 A. No.

13 Q. Did you copy from "The Next Episode" when you wrote  
14 "Don't"?

15 A. No.

16 Q. I'd like to show you what's been marked for identification  
17 as Defendant's Exhibit 223.

18 Who is that in the video?

19 A. That's me at the same gig doing the "I See Fire."

20 MS. FARKAS: I'd like to move Exhibit 223 into  
21 evidence.

22 MR. FRANK: No objection, your Honor.

23 THE COURT: Received.

24 (Defendant's Exhibit 223 received in evidence)

25 BY MS. FARKAS:

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1 Q. Let's play the first 30 seconds.

2 Am I correct that -- put it on the screen -- if we  
3 look at your feet, is that another shot of those loop pedals  
4 that you were talking about earlier?

5 A. Yeah. So the one furthest to the left presses record, and  
6 then when you press that again, it plays it. The one to the  
7 right of it is the stop button. When you're recording it, you  
8 can loop and loop and loop and add layers.

9 Q. Let's play the video from the start until about 1:25, and  
10 I'd like to ask you when it finishes, what are you playing  
11 during that first minute and 25 seconds?

12 A. Of course.

13 (Video played)

14 Q. So what were we just watching there?

15 A. That's me setting up the backing track for a song of mine  
16 called "Take It Back."

17 Q. And what we just saw, you creating all those tracks, that's  
18 what allows you to sing over all those tracks since you don't  
19 have a band on the stage?

20 A. Yeah. So as you see, I take my guitar off and then take my  
21 microphone. It's just essentially live -- creating the track  
22 live, and then it's kind of like having a backing track, but  
23 each night it could be different because you're creating it on  
24 the spot. But, yeah, I've done that for 17 years.

25 Q. OK. We're going to continue the video. When we stop the

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1 video again, I'd like you to tell us what you're singing in  
2 this clip.

3 (Video played)

4 Q. What are you singing there?

5 A. A song of mine called "Take it Back."

6 Q. And now we're going to fast-forward to 5:13 and ask you to  
7 identify what you're singing there.

8 (Video played)

9 Q. So what are you singing there?

10 A. "Superstition" by Stevie Wonder.

11 Q. Are the musical tracks that you recorded on the loops still  
12 playing behind your vocals to "Superstition"?

13 A. Yeah.

14 Q. We're going to fast-forward now to 6:16 and ask you to  
15 identify what you're playing there.

16 (Video played)

17 A. That's -- well, technically, it's back to "Take it Back,"  
18 but those are lyrics from a song that I did with Rizzle Kicks  
19 called the "Dreamers" remix. But I added that verse into my  
20 "Take it Back," basically. But the originality -- sorry to be  
21 confusing -- the origin of those lyrics are from a remix, and  
22 then I took those lyrics and put them on my song.

23 Q. And your song is "Take it Back"?

24 A. Yeah.

25 Q. Now, if we fast-forward again to 7:25, if you can tell us

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1 what you're singing there as well.

2 (Video played)

3 Q. What is that you're singing there?

4 A. That's "Ain't No Sun Shine," Bill Withers.

5 Q. Would it be correct to say this is a live performance where  
6 you're mashing up your song "Take it Back" with "Superstition"  
7 and "Ain't No Sunshine"?

8 A. That's correct.

9 Q. Did you copy from "Superstition" when you wrote "Take it  
10 Back"?

11 A. No.

12 Q. Did you copy from "Ain't No Sunshine" when you wrote "Take  
13 it Back"?

14 A. No.

15 Q. Let's return for a moment to the Zurich performance where  
16 you sang some of the lyrics to "Let's Get It On" over the  
17 chords of "Thinking Out Loud."

18 The plaintiffs' claim that this performance indicates  
19 that you copied "Let's Get It On" in creating "Thinking Out  
20 Loud." Do you have a response to that?

21 A. Well, I'm playing over the "Thinking Out Loud" chords, and  
22 they are actually two different chords. I know that we're  
23 arguing similar, but they're different.

24 Q. Have you ever performed a mashup of "Thinking Out Loud"  
25 with any other songs other than "Let's Get It On"?

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1 A. I do it quite a lot, yeah. I do it quite a lot.

2 Q. What other songs have you mashed up with "Thinking Out  
3 Loud"?

4 A. The last time I mashed up, I mashed up "Someone You Loved"  
5 with Lewis Capaldi. I've done "Can't Help Falling in Love,"  
6 Elvis Presley. I've done "I Will Always Love You." I would  
7 say Whitney Houston, but, obviously, it's written by Dolly  
8 Parton, yeah.

9 Q. Anything else?

10 A. Probably countless, yeah. I couldn't reel them off. I'm  
11 sure if you went on YouTube and typed them in, it would be a  
12 lot.

13 Q. Did you ever mash up "Thinking Out Loud" with a Van  
14 Morrison song?

15 A. Yes.

16 Q. With you know?

17 A. "Crazy Love," "Have I Told You Lately," those are two  
18 super, super well-known Van Morrison songs that you can mash up  
19 and I have mashed up with.

20 Q. Do you know when in relation to the Zurich performance you  
21 did a mash up of "Thinking Out Loud" with "I Will Always Love  
22 You"? Do you remember if it was the same tour?

23 A. I remember that tour playing around more like that. You  
24 can kind of get into a situation on tour where sometimes the  
25 set is the same set every night, and sometimes it's nice to

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1 throw in curveballs every now and then to spice it up a bit.

2 Q. Do you recall when you mashed up "Thinking Out Loud" with  
3 "Can't Help Falling in Love," was that also the same tour?

4 A. I think so, yeah.

5 Q. Did you copy from "I Will Always Love You" when you wrote  
6 "Thinking Out Loud"?

7 A. No.

8 Q. Did you copy from "Can't Help Falling in Love" when you  
9 wrote "Thinking Out Loud"?

10 A. I did not, no.

11 Q. Are you aware of any other songs released before "Thinking  
12 Out Loud" that use the same chord progression at issue in  
13 "Thinking Out Loud" or "Let's Get It On"?

14 A. I mean, there is, obviously, the Van Morrison one. I said  
15 "Have I Told You Lately." "Still the One," Shania Twain, is  
16 the same chord. That's the one everyone knows. "Dress Like a  
17 Woman" uses the same chord.

18 Q. Would it be possible to mash up these songs with "Thinking  
19 Out Loud"?

20 A. Can I?

21 Q. Sure.

22 (Guitar played)

23 A. When your legs don't work like they used to before ... Have  
24 I told you lately that I loved you?

25 And I can't sweep you off of your feet, and then,

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1       *Looks like we made it. Look how far we've come, my baby.*

2               *Take me into your loving arms ... Oh, she takes just*  
3       *like a woman ... Kiss me under the light of a thousand stars.*

4               *Anyway.*

5       Q. Are there songs that have different chord progressions than  
6       the ones of "Thinking Out Loud" that you could mash up  
7       "Thinking Out Loud" with if you were asked to do so,  
8       hypothetically?

9       A. Well, "Crazy Love" as the mash up that I would have played.

10              (Guitar played)

11             *I can hear her heart beat from a thousand miles, and*  
12       *the heavens, they open every time she smiles. Take me into*  
13       *your loving arms.*

14             *Or, People get ready, there's a train a-coming ...*  
15       *Kiss me under the light of a thousand.*

16             So it is a common progression.

17       Q. Thank you.

18             You mentioned earlier that some of your musical  
19       influences during your teenage years, you mentioned Elton John,  
20       Van Morrison, I believe. Are there any others?

21       A. Yeah, countless others. Countless others. The Beatles.  
22       Stevie was definitely up there, Joni Mitchell. Damien Rice was  
23       the reason I started writing songs. There was a band called  
24       Nizlopi that I toured with as a guitar tech for years that were  
25       a major, major influence on me. Foy Vance was a huge influence

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Sheeran - Direct

1 on me. Loop Station, yeah.

2 Q. Do you recall whether you were listening to any particular  
3 artist at the time you were writing songs for "x"?

4 A. Yeah. I mean, I could have been listening to any of the  
5 artists that I grew up listening to or was a fan of, yeah. I  
6 always listened to Van Morrison. He's one of my favorite  
7 artists.

8 Q. And at the time that you and Amy wrote "Thinking Out Loud,"  
9 were you aware of the song "Let's Get It On"?

10 A. Yeah, of course. Yeah.

11 Q. Are you familiar with Ed Townsend?

12 A. Not until this case. Sorry.

13 Q. When you were writing "Thinking Out Loud," were you  
14 thinking of specific songs or artists during the creation  
15 process?

16 A. No.

17 Q. You mentioned you recorded an early version of "Thinking  
18 Out Loud" on your phone that night that you created it with  
19 Amy. Did you listen to the recording that night with Amy?

20 A. Yeah. Definitely, yeah.

21 Q. Did you or Amy discuss whether it reminded you of any  
22 particular artists that night?

23 A. No. We were just excited to have written a song. The  
24 voice recording is the song. It sounds very, very different  
25 once you put production on it, but the song is the voice

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1 recording.

2 Q. Did there come a point after you and Amy wrote the song  
3 that night that that song, "Thinking Out Loud," started  
4 reminding you of another artist? Did you have a nickname for  
5 the song?

6 A. Yeah. I remember very clearly Jake's dad playing piano on  
7 the song and thinking that it emulated Van Morrison, and then  
8 the record label started referring to it as the Van Morrison  
9 song.

10 Q. When you and Amy wrote "Thinking Out Loud," did the song  
11 "Let's Get It On" cross your mind?

12 A. No.

13 Q. I'm going to ask you a very direct question here. Did you  
14 copy anything from "Let's Get It On" when you were writing  
15 "Thinking Out Loud"?

16 A. No.

17 Q. I'd like to return to discuss a little bit about Van  
18 Morrison with you. For those of us who may not be as familiar  
19 with Van Morrison as you are, could you tell us who he is,  
20 please.

21 A. He's a singer from Northern Ireland who had a great deal of  
22 success in the '60s, '70s, '80s, '90s, up until today. I would  
23 say he's one of the greatest artists of all time. Obviously,  
24 music is subjective and people have their own opinions, but for  
25 me he's one of the most important influences in my life. And,

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1 yeah, I've had the pleasure of meeting him a few times, and  
2 he's great.

3 Q. Now, you testified that that "Thinking Out Loud" had the  
4 nickname of the Van song. Are there any specific Van Morrison  
5 songs you believe are similar to "Thinking Out Loud"?

6 A. "Tupelo Honey," "Tore Down a la Rimbaud," "Why Must I  
7 Always Explain," "Have I Told You Lately?" What was the other  
8 one? He's got an album from -- there is another one. I'm not  
9 like super familiar with it, but there is another one.

10 Q. I'd like to play for you for identification what has been  
11 marked as Track 1 on Defendant's Exhibit 213C.

12 (Audio played)

13 Q. What is that song?

14 A. "Crazy Love" from "Moondance."

15 MS. FARKAS: I'd like to move Track 1 into evidence.

16 MR. FRANK: No objection, your Honor.

17 (Defendant's Exhibit 213C, Track 1 received in  
18 evidence)

19 BY MS. FARKAS:

20 Q. Do you know if "Crazy Love" was released before or after  
21 "Let's Get It On"?

22 A. It was released before.

23 Q. What do you find similar about this song and "Thinking Out  
24 Loud"?

25 A. I mean, I just think they're similar. They have the same

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Sheeran - Direct

1 anticipation. They have similar chords. They're the same sort  
2 of subject matter. Yeah. And I think because I grew up  
3 listening to him, I would say my voice can sound like him at  
4 times.

5 Q. Are you able to demonstrate for us on your guitar "Crazy  
6 Love" as it compares to "Thinking Out Loud," in your mind?

7 A. Well, they are different chords at the end. So here you  
8 go.

9 (Guitar played)

10 *I can hear her heart beating from a thousand  
11 miles .... So he goes back to the D, and I go, When your legs  
12 don't work like they used to before ... into the A. But it's  
13 the same, that, on the anticipation as "Thinking Out Loud."*

14 Q. Are you able to play the -- are you able to play the --  
15 sing the vocal melody of "Crazy Love" over the chords of  
16 "Thinking Out Loud"?

17 A. Yeah, of course, yeah. I was just doing that.

18 (Guitar played)

19 *I can hear her heart beat from a thousand miles.  
20 Yeah, the heavens, they open every time she smiles. Now, when  
21 I come to her, when I'm feeling low, she give me love, love,  
22 love, love, crazy love. She give me love, love, love, love,  
23 crazy love.*

24 Q. And is that section similar to any other portion of  
25 "Thinking Out Loud" to you?

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Sheeran - Direct

1 A. Yeah, yeah. The we found love right where we are, it's the  
2 similar chords.

3 (Guitar played)

4 Q. I'd like to play for you for identification what has been  
5 marked as Track 2 on Defendant's Exhibit 213C.

6 (Audio played)

7 Q. What is that song?

8 A. "Tupelo Honey."

9 MS. FARKAS: I'd like to move Track 2 into evidence.

10 MR. FRANK: No objection, your Honor.

11 (Defendant's Exhibit 213C, Track 2 received in  
12 evidence)

13 BY MS. FARKAS:

14 Q. Do you know if "Tupelo Honey" was released before or after  
15 "Let's Get It On"?

16 A. I have no idea.

17 Q. What do you find similar with this song and "Thinking Out  
18 Loud"?

19 A. Again, chords.

20 (Guitar played)

21 She's as sweet as Tupelo Honey, and, When your legs  
22 don't work like they used to before.

23 Q. I'd like to play for you for identification what's been  
24 marked as Track 3 on Defendant's Exhibit 213C.

25 (Audio played)

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Sheeran - Direct

1 Q. Do you know what song that is?

2 A. That's "Tore Down a la Rimbaud."

3 MS. FARKAS: I'd like to move Track 3 into evidence,  
4 please.

5 MR. FRANK: No objection.

6 THE COURT: Received.

7 (Defendant's Exhibit 213C, Track 3 received in  
8 evidence)

9 BY MS. FARKAS:

10 Q. Do you know when this track was released?

11 A. No.

12 Q. Now, what do you find similar about this song and "Thinking  
13 Out Loud"?

14 A. Again, chords.

15 (Guitar played)

16 *Showed me pictures in the gallery... and then, When  
17 your legs don't work like they used to before.*

18 Q. I'd like to play for you for identification what's been  
19 marked as Track 4 on Defendant's 213C.

20 (Video played)

21 Q. What song is that?

22 A. "Why Must I Always Explain?"

23 MS. FARKAS: I'd like to move Track 4 into evidence.

24 MR. FRANK: No objection, your Honor.

25 THE COURT: Received.

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(Defendant's Exhibit 213C, Track 4 received in evidence)

BY MS. FARKAS:

Q. What do you find similar about this song?

A. Chords again. Maybe even melody.

(Playing guitar)

*Why must I always explain? ... When your legs don't work like they used to before.*

Q. Mr. Sheeran, I'd like to direct your attention to Dr. Stewart's testimony regarding the melodies that he has placed in issue in this case. One of the snippets of melodies involved the opening melody of "Thinking Out Loud" that you just sang which is set to the words, *When your legs don't work like they used to before*. And I direct your attention to his testimony when he said that there's a little grace note before the lyric *work*. Do you recall that?

A. Yes.

Q. Does his testimony accurately reflect what is actually in "Thinking Out Loud"?

A. No, not at all.

Q. I would like to direct you to Dr. Stewart's slides 63 and 65 where he changed some of the notes to the melody of "Thinking Out Loud." Do you remember that?

A. Yeah.

Q. So let's look at slide 63 regarding the opening melody. Do

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Sheeran - Direct

1 you remember when he played that audio file he created?

2 A. I do.

3 Q. Let's play the audio file that Dr. Stewart created for this  
4 slide.

5 (Audio played)

6 That was for the top part, "Let's Get It On." Now  
7 let's hear what he created for "Thinking Out Loud."

8 (Audio played)

9 Is that an accurate depiction of "Thinking Out Loud"?

10 A. No, that's horrible.

11 Q. Let's look at slide 65, also regarding the opening melody,  
12 and let's play the audio file.

13 A. Can I sing them just so you --

14 Q. Sure. Please do.

15 A. *When your legs don't work like they used to before*, and his  
16 is, *When your legs don't work like they used to before*. It's  
17 -- he's putting in notes to try and find notes to try and find  
18 similarities. But -- I don't want to swear, but, yeah, I'm not  
19 going to swear.

20 Q. I approve.

21 Let's look at slide 65, also regarding the opening  
22 melody, and let's play the audio file that Dr. Stewart created  
23 for this slide, "Thinking Out Loud," please.

24 (Audio played)

25 Is the audio and the slide of slide 65 an accurate

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Sheeran - Direct

1 depiction of what's in "Thinking Out Loud"?

2 A. No. And he's also removed a word and a note on the end,  
3 like, *Will your eyes still smile from your cheeks*, he's got,  
4 *Will your eyes still smile your cheeks*. So it isn't even  
5 accurate words or notes.

6 I just think -- if I can be honest, I think what he's  
7 doing is criminal here, and I just don't -- he's basically  
8 changing it to make it seem like something that it isn't, and I  
9 don't know why he's allowed to be an expert. Obviously, my  
10 opinion, but, like, I just -- yeah.

11 Q. Let's look at 67 from Dr. Stewart's testimony that  
12 addresses the "Thinking Out Loud" chord melody. Do you see  
13 where he's crated a grace note before the *take me into your*  
14 *loving arms*?

15 A. He takes that grace note so it starts with a three, but it  
16 doesn't start with a three, it takes with, *Take me into your*  
17 *loving arms* (vocalizing), it's not that. That's why in the  
18 sheet music it's written as (vocalizing). So this is going to  
19 get me frustrated, I'm sorry, but it's like -- yeah, it's just  
20 not right.

21 Q. We'll change the subject.

22 A. No, you can stay on the subject. Sorry.

23 Q. So going back to the -- a variation, I'll say. Going back  
24 to the opening melody that Dr. Stewart spent some time talking  
25 about, I'm going to ask you one more time to play that opening

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Sheeran - Direct

1 melody for a different reason. Can you sing the opening melody  
2 to -- and lyrics to "Thinking Out Loud."

3 A. Oh, the opening melody.

4 Q. Yes.

5 A. *When your legs don't work like they used to before.*

6 (Guitar played)

7 Q. Now, you mentioned the song "The A Team" earlier.

8 A. Yeah.

9 Q. Does "The A Team" feature the following lyric, *And she*  
10 *don't want to go outside tonight?*

11 A. Uh-huh.

12 Q. Could you sing that line for us, please.

13 A. *And she don't want to go outside tonight ... When your legs*  
14 *don't work like they used to before ... She don't want to go*  
15 *outside tonight.*

16 Q. And when was "A Team" written?

17 A. "A Team" was written in 2009.

18 Q. So about five years before "Thinking Out Loud"?

19 A. Yeah.

20 Q. So you had actually written a very similar melodic segment  
21 five years before "Thinking Out Loud"?

22 A. Yeah, I mean, those sort of melodies, they're common in  
23 music that I make. They're common in Van Morrison music.  
24 They're common in Nizlopi music that I was influenced by. It's  
25 a melody that is -- that sort of style can be sung over

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Sheeran - Direct

1 acoustic music. It's not, like, specific to one genre.

2 Q. Do you have a favorite Van Morrison song?

3 A. Yeah. "Into the Mystic" would be my favorite, I think.

4 Q. And if I asked you to play the chords to "Into the Mystic"  
5 from memory right now, could you do it?

6 A. Yeah, of course.

7 Q. So if we go back to February -- people might get mad of me,  
8 but I'm going to say no.

9 A. Yeah, yeah, yeah.

10 Q. So now if we go back to February 13, 2014, on the day that  
11 you wrote "Thinking Out Loud," if someone asked you to play the  
12 chords from "Let's Get It On" that day, would you have been  
13 able to do it?

14 A. If you play -- if you played me any song, I'll be able to  
15 work out the chords, but I wouldn't have been able to play it  
16 from memory.

17 Q. So on that day that you wrote "Thinking Out Loud" if  
18 someone just said to you right then and there, without playing  
19 it for you first, if someone just said to you, could you play  
20 the chords from "Let's Get It On" right now, would you have  
21 been able to do it?

22 A. No, I'd never covered that song before.

23 Q. Just a few more questions.

24 What's your reaction to being accused of infringement  
25 in this case?

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Sheeran - Cross

1 A. I find it really insulting to work my whole life to be a  
2 performer and a songwriter and have someone diminish it by  
3 saying that I stole it. It's like I work really hard to be  
4 where I'm at, write songs the way I do, and to just have  
5 someone come in and say we don't believe you, you must have  
6 stolen that, that's why you've had success, I find it really  
7 insulting.

8 Q. And if the plaintiffs were awarded ownership of the chord  
9 progression at issue, do you think that would have an impact on  
10 your songwriting?

11 A. God, yeah. If that happens, I'm done. I'm stopping.

12 MS. FARKAS: No further questions at this time.

13 THE COURT: Mr. Frank.

14 MR. FRANK: Yes, your Honor.

15 THE COURT: Go ahead.

16 MR. FRANK: Thank you very much, your Honor.

17 CROSS-EXAMINATION

18 BY MR. FRANK:

19 Q. Good afternoon, Mr. Sheeran. I think it is afternoon,  
20 anyway.

21 A. Afternoon.

22 Q. I wanted to -- you covered quite a bit of ground in your  
23 direct testimony. So I had a couple I wanted to go back a  
24 little bit to, I guess it was Thursday, when you started giving  
25 your testimony and clarify a couple of issues about your

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Sheeran - Cross

1 background.

2 Could you tell us, were your parents into the arts?

3 A. Yeah.

4 Q. What do your parents do for a living?

5 A. They're both retired.

6 Q. I'm sorry?

7 A. They've both retired.

8 Q. What did they do prior to them retiring?

9 A. Many jobs. My dad has worked in art galleries. My mom has  
10 worked in art galleries. My dad has lectured. My mom has made  
11 jewelry. They've done lots of different things. My mom has  
12 worked in primary schools teaching. My dad has taught in high  
13 schools teaching. There's no set job that they've had.

14 Q. Your father was a pretty prominent art curator during his  
15 career?

16 A. In his early 20s, yes.

17 Q. Would you say that -- would you agree with me that your  
18 upbringing was upper middle class?

19 A. I think my upbringing was middle class, yeah.

20 Q. You went to a private preparatory academy before you left  
21 to pursue music?

22 A. I went to one when I was younger that my grandparents paid  
23 for, yeah.

24 Q. So the narrative that you were discussing on Thursday with  
25 regard to sleeping on couches and playing empty halls for a

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Sheeran - Cross

1 number of years, you were getting the financial support of your  
2 family, weren't you?

3 A. No. They weren't broke in the credit crunch.

4 Q. You were -- as early as 17, I think you testified that you  
5 had a management company that was sending you to go work with  
6 Amy Wadge, correct?

7 A. Correct.

8 Q. You got your first record deal when you were 19 years old,  
9 correct?

10 A. Correct.

11 Q. So when were you in a position with your career time-wise  
12 to start supporting yourself?

13 A. When I first got paid for my music, which would have been  
14 20, 21.

15 Q. Thank you.

16 You spent some time on Thursday sharing with us the  
17 story about how your grandparents inspired "Thinking Out Loud."  
18 Do you remember that?

19 A. Yeah.

20 Q. You also indicated during your testimony, I think, that a  
21 new relationship with a girlfriend at the time also might have  
22 played a role in that, correct?

23 A. Yeah.

24 Q. Would it be fair to say that the inspiration of your  
25 grandparents' relationship, the new relationship with this

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Sheeran - Cross

1 girlfriend are reflected in the lyrics of the song?

2 A. Yeah.

3 Q. Do you understand that this lawsuit is actually based on  
4 the studio recorded version of "Thinking Out Loud" and its  
5 similarities to "Let's Get It On"; it's not based on the lyrics  
6 at all?

7 A. Then why are you going for melody, then?

8 Q. I --

9 A. You guys are bringing up melody. So, like, what --

10 Q. I'm asking you if you understand that the lyrics are not at  
11 issue in this case?

12 A. OK.

13 Q. Do you understand that?

14 A. Yes.

15 Q. Thank you.

16 Have you ever actually read the complaint in this  
17 lawsuit setting forth the claims?

18 A. No, I'm not a lawyer.

19 Q. You -- I'm sorry. You said?

20 A. I'm not a lawyer.

21 Q. OK. I understand that.

22 But you said that you're incredibly insulted. Didn't  
23 you have some manner of curiosity to read what's actually being  
24 asserted against you?

25 A. This sort of stuff is really common in songwriting now. It

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Sheeran - Cross

1 has happened to pretty much all of my contemporaries, all the  
2 artists I know. I've had numerous people get in touch with me  
3 in the last week or so being like, you have to win this for us.  
4 I just -- it's just something that happens. When you write  
5 songs and they're successful, someone comes after you.

6 Q. I understand.

7 So you didn't read the lawsuit?

8 A. Dude, it's like this big. I'm not a lawyer.

9 Q. I understand.

10 Do you know who Lawrence Ferrara is?

11 A. Yes.

12 Q. Who is he?

13 A. He's an expert musicologist.

14 Q. Are you familiar with Dr. Ferrara's credentials?

15 A. I know that they're pretty impressive, yes.

16 Q. Have you met Dr. Ferrara or reviewed any of his reports?

17 A. No, I just know he wins a lot.

18 Q. You're aware that Dr. Ferrara was engaged by people who are  
19 representing your best interests?

20 A. Yeah.

21 Q. Do you have any reason to believe that Dr. Ferrara's  
22 opinions in your case are inaccurate?

23 A. No.

24 Q. Given that Dr. Ferrara's the musicologist that was hired on  
25 your behalf, would it be fair to say that you would defer to

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Sheeran - Cross

1 his opinions that were given in connection with this case?

2 A. He's been hired on our behalf for this, but he was hired as  
3 an impartial person for many, many things. He's an expert  
4 musicologist and people follow his advice.

5 Q. OK. So back to my original question. Would you defer to  
6 the opinions he's given in this case?

7 A. I don't understand the question.

8 Q. Well, do you believe that his opinions are -- in this case  
9 are accurate?

10 A. Yes.

11 Q. Thank you.

12 On Thursday you gave testimony regarding the first 24  
13 seconds of "Thinking Out Loud." Do you recall that? And I  
14 think you revisited that today, the first 24 seconds, the  
15 guitar part, you recall testifying about that?

16 A. I recall, yes.

17 Q. In fact, in addition, you played some guitar and you  
18 attempted to recreate the first 24 seconds of "Thinking Out  
19 Loud," correct?

20 A. There was no recreation there. I was playing the chords  
21 that are in the 24 seconds of -- well, they're in the whole of  
22 "Thinking Out Loud" apart from the pre.

23 Q. You played what you are representing as the first 24  
24 seconds as reflected on the studio recording of "Thinking Out  
25 Loud"?

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Sheeran - Cross

1 A. I'm playing what I play every single time I play "Thinking  
2 Out Loud" and when I recorded "Thinking Out Loud."

3 MR. FRANK: Kim, would you pull up Dr. Stewart's  
4 slide 28, please.

5 Q. And if I understood you correctly, I believe you were  
6 trying to make the point that the first 24 seconds of "Thinking  
7 Out Loud" is actually comprised of the following chord pattern:  
8 a D chord followed by a second F sharp chord combined with a D  
9 note for the root, a third G major chord, and a fourth A major  
10 chord, is that correct?

11 A. No, because it isn't an F sharp chord, it's D with an F  
12 sharp. So it's a D chord with an F sharp.

13 Q. I actually asked you that. I said F sharp with a D.

14 A. No, you didn't. You said it was an F sharp chord if you  
15 read the transcript.

16 Q. I'll do that. Thank you.

17 If you look at the "Thinking Out Loud" model that's  
18 reflected in the slide 28, does that accurately reflect the  
19 chords and the verse and chorus of "Thinking Out Loud"?

20 MS. FARKAS: Objection. Lacks foundation. He said he  
21 doesn't read music.

22 MR. FRANK: I'm asking him to read the chords at the  
23 top.

24 A. It says D, D/F sharp, G, A, yes.

25 Q. So is your testimony that throughout the song, the first 24

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Sheeran - Cross

1 seconds -- first 24 seconds, the rest of the song is identical,  
2 second chord has a D note in it?

3 A. It's not the same chords the entire way through, no. I do  
4 different cords in the pre-chorus. I do E minor, then A7, then  
5 D.

6 Q. I'm just asking about this particular --

7 A. You're actually asking about the song, so I am telling you  
8 that they're not the same chords throughout the song.

9 Q. Let me be clear. The first 24 seconds, you're saying you  
10 have a D note in the second chord, is that your testimony?

11 A. Yeah, just that D and then D with F sharp.

12 (Guitar played)

13 Q. And it's also your testimony that you play the exact same  
14 chord pattern with that D note in the second chord all the way  
15 through the song?

16 A. I mean, what makes more sense to you, that I would change  
17 it for 24 seconds, or I would play the same chord sequence  
18 throughout? Like, do you -- do you believe this actually?  
19 When you read and listen to all of this and you see the notes  
20 being changed and you see the words getting taken out and you  
21 see the cords getting changed, can you honestly believe and  
22 stand behind this and go, no, definitely didn't?

23 Q. I'm just asking you, Mr. Sheeran, whether you played the  
24 second chord of that chord progression is -- is the same with  
25 the D note all the way through?

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Sheeran - Cross

1 A. These chords here are the chords that I play throughout the  
2 song when I play it live and when I recorded it.

3 Q. Thank you.

4 Could you pull up slide 25, Kim.

5 And you saw this slide the other day that Dr. Stewart  
6 presented it, correct? You're familiar with this?

7 A. I'm sure I saw it the other day, yes.

8 Q. And if you'll look at my fancy pointer here, I'm pointing  
9 to the note that's been circled. He says this note, which is a  
10 D note, is not in the first 24 seconds of the song. Is  
11 Dr. Stewart wrong?

12 A. How would Dr. Stewart know? Was he there in the studio?  
13 Did he watch me play the guitar? Has he watched me play it  
14 live? How would he know?

15 Q. So he's wrong?

16 A. Yes, really wrong, man. Really wrong.

17 MR. FRANK: OK. Kim, if you would, could you pull up  
18 Dr. Ferrara's report, page 17, music example one.

19 MR. ZAKARIN: Which report is this?

20 MR. FRANK: The original report.

21 MS. FARKAS: Objection, your Honor. First of all,  
22 it's not into evidence. It's an early preliminary report.

23 MR. FRANK: It was disclosed during discovery.

24 MS. FARKAS: OK. But it's -- it was provided in  
25 discovery, but it's not in evidence.

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Sheeran - Cross

1 MR. FRANK: I'm not putting it into evidence.

2 It's for impeachment purposes, your Honor. He said  
3 that he would defer to Dr. Ferrara's opinions.

4 MS. FARKAS: What year?

5 MR. FRANK: This is 2018, I believe.

6 THE COURT: Well, normally, we don't allow one witness  
7 to comment about the testimony of some other witness. The  
8 theory is that each one stands on its own. Because of the  
9 relationship of Dr. Ferrara to this case, I've allowed you to  
10 go as far as you have, but when it gets into what he wrote at  
11 an earlier stage, I think we're drifting too far apart. And I  
12 gather he'll be testifying, and you could ask him these things.

13 MR. FRANK: OK.

14 THE COURT: So the objection's sustained.

15 MR. FRANK: Thank you, your Honor.

16 BY MR. FRANK:

17 Q. Mr. Sheeran, would it surprise you to know that your own  
18 expert musicologist in this Musical Example No. 1 in a report  
19 that was commissioned on your behalf has no D note in the  
20 second chord of the first 24 seconds? Would that surprise you  
21 to know that?

22 MS. FARKAS: Objection, your Honor. Same objection.

23 THE COURT: What's the objection?

24 MS. FARKAS: Instead of showing him the document, he's  
25 basically paraphrasing it and trying to do the same thing that

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Sheeran - Cross

1 your Honor told him not to do. He's referring to  
2 Dr. Ferrara's --

3 THE COURT: Well, actually approaches it from a  
4 different angle, which is whether he'd be surprised about it.  
5 I should think it would depend upon the setting, and I'm trying  
6 to keep you from going too adrift from this man's testimony.  
7 I'll allow this question.

8 MR. FRANK: Thank you, your Honor.

9 Q. Would it surprise you to know that Dr. Ferrara agrees with  
10 Dr. Stewart that there's no D note in the second chord of the  
11 first 24 seconds?

12 A. I just don't know how either of them know what I'm playing  
13 on the guitar better than I would know what I'm playing on the  
14 guitar, because I'm playing -- I, me myself, am playing that on  
15 guitar. So I know the chords that I'm playing on guitar  
16 because it's me playing them on guitar.

17 If you're listening to a song, you can go, oh, it's  
18 this or it's this or maybe he's added this. But me personally,  
19 I know what I'm playing on guitar because it's me playing it on  
20 guitar. Does that make sense?

21 Q. It makes sense, but it also conflicts, respectfully, with  
22 the earlier testimony in which you said --

23 A. Whether I trust an expert musicologist.

24 Q. You have unfettered faith in Dr. Ferrara's credentials, and  
25 he disagrees with you. Are you surprised by that?

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Sheeran - Cross

1 A. On one tiny point in his report. You're poking holes in  
2 something that doesn't exist here. I know what I played, the  
3 chords. You're bringing up a report that isn't even in  
4 evidence, that isn't his report now, and saying, oh, but in  
5 2018 this report that he wrote that you actually haven't put in  
6 evidence -- it just doesn't make sense.

7 Q. So you're saying that two expert musicologists, one of whom  
8 is working for you, who have transcribed the first 24 seconds  
9 of the song are wrong and you're right?

10 A. Yes, because it's me playing the chords.

11 Q. I understand.

12 A. Like, obviously, I would know better because I'm playing  
13 the chord.

14 MS. FARKAS: Your Honor, I would note an objection.  
15 We have a witness here who actually has factual knowledge about  
16 the creation of the song, so let's stick to that.

17 THE COURT: The objection's sustained. And I think  
18 you mischaracterized what he actually said.

19 MR. FRANK: Thank you, your Honor. I'll move on.

20 Kim, could you pull up Ms. Wadge's declaration.

21 Q. Mr. Sheeran, could you take a look at that document.

22 Are you familiar with that document?

23 A. Sorry. Can I just read the document, please?

24 Q. Sure, please.

25 MR. FRANK: Kim --

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Sheeran - Cross

1                   Do you object to it? It's a declaration that you  
2 provided as a pleading.

3 A. Cool. I've read it.

4                   MR. FRANK: I'm waiting to see if your lawyers are  
5 objecting to it or not.

6                   MS. FARKAS: Depending on the purpose that he's using  
7 it for, no objection at this time.

8                   MR. FRANK: Your Honor, permission to publish the  
9 declaration of Amy Wadge?

10                  THE COURT: Admitted and granted.

11                  MR. FRANK: Thank you, your Honor.

12 BY MR. FRANK:

13 Q. Now, Mr. Sheeran, have you had sufficient opportunity to  
14 read this declaration?

15 A. No.

16 Q. Take your time.

17 A. Oh, as in now?

18 Q. Yes.

19 A. Yes, I've just read it. I've not read it before today.

20 Q. Prior to today, OK. You haven't read it before today.

21                  In this declaration, Ms. Wadge seems to be correcting  
22 your depositional testimony about when you actually wrote and  
23 recorded "Thinking Out Loud." Is that a fair -- is that a fair  
24 representation of what's written there?

25 MS. FARKAS: Objection. No foundation. And I would

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Sheeran - Cross

1 ask Mr. Frank not to testify.

2 MR. FRANK: I'll rephrase the question.

3 Q. What day did -- do you recall testifying at your  
4 deposition?

5 THE COURT: Mr. Frank.

6 MR. FRANK: I'm sorry.

7 THE COURT: We're not interested in a representation  
8 of what's written there. We're interested in what is actually  
9 written there.

10 MR. FRANK: I see. Thank you, your Honor. I  
11 appreciate that.

12 Q. Mr. Sheeran, do you recall being deposed in this action?

13 A. Yeah.

14 Q. And do you recall what date you proffered as the date you  
15 actually wrote "Thinking Out Loud"?

16 A. No.

17 Q. OK. You've had an opportunity to read Ms. Wadge's  
18 declaration as to the date it was written. Do you agree or  
19 disagree with what's written in that declaration as to the date  
20 when the song was actually written?

21 A. I remember I wrote it in February 2014. This was, like,  
22 nine years ago, man. I don't know specific days.

23 Q. OK. But your deposition that was taken in this action was,  
24 I'll represent to you, in January of 2018. Is your memory  
25 better now than it was then?

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Sheeran - Cross

1 A. I don't know what you're trying to ask by that question.

2 Q. Right.

3 A. I don't -- like, that was nine years ago. We might have  
4 differences in what the specific date and specific times were,  
5 but we wrote the song in February 2014.

6 Q. I understand.

7 If we can go to the declaration of Jake Gosling,  
8 please.

9 And this, again, is a declaration that was proffered.  
10 It's a pleading. Do you have any objection?

11 MS. FARKAS: No objection.

12 Q. Mr. Sheeran, if you would take a moment to review the  
13 document that's in front of you.

14 A. Cool.

15 Q. Have you had an opportunity to read it?

16 A. Yeah.

17 Q. OK. Do you recall giving testimony in your deposition,  
18 January 2018, as to the bassline in "Thinking Out Loud"?

19 A. Remind me.

20 Q. It was my understanding -- I'll represent to you that you  
21 testified that there was no actual bass in the song "Thinking  
22 Out Loud"; that it was generated by a music synthesizer. Do  
23 you recall that?

24 A. Yeah, I guess so. Are we talking about production and  
25 recording, or are we talking about songwriting?

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Sheeran - Cross

1 Q. That's why we're -- yes, we're talking about production.

2 That's why we have your producer's declaration in front of you.

3 A. I thought this is a copyright case and songwriting.

4 Q. I understand. But if you would please respond to the  
5 questions as proffered.

6 A. I've responded.

7 Q. OK. So do you recall testifying that there was no bassline  
8 in -- there was no actual bass being played in "Thinking Out  
9 Loud"?

10 A. What do you mean by that? There's bass on the song. What  
11 do you mean?

12 Q. You said that the bass was synthesized by a --

13 A. OK. I was mistaken that there was a synthesized bass.

14 There's a bass on the song. Is that really your argument here?

15 Q. Do you agree with Mr. Gosling's statements in this  
16 declaration that there was actually a bassline played -- a bass  
17 guitar played?

18 A. Again, nine years ago. Can't remember specifics on the  
19 recording of the song.

20 Q. I understand.

21 But was there a bassline played, to your knowledge?

22 Do you agree with --

23 A. On the recorded version of "Thinking Out Loud" there is a  
24 bassline played. It could be synthesized bass; it could be  
25 real bass. I don't recall.

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Sheeran - Cross

1 Q. With regard to the musician who played the bass, Chris  
2 Leonard, he's a frequent collaborator per your testimony,  
3 correct?

4 A. Yes.

5 Q. Mr. Sheeran, given that it doesn't seem that you know when  
6 you recorded this song, whether there's a bass on it, and what  
7 notes were played in the first 24 seconds, do you feel that  
8 you're competent to testify about the circumstances surrounding  
9 the writing and production of this song?

10 MS. FARKAS: Objection, your Honor. Argumentative.  
11 Mischaracterizes his testimony.

12 THE COURT: Well, it certainly is argumentative, but  
13 I'll let him answer.

14 Q. Do you feel that you're competent to testify based on some  
15 of the mistakes that we've identified in your recollection?

16 A. I don't see it as a mistake not remembering a specific day  
17 that I recorded something or a specific day that I wrote  
18 something. I know how I wrote it. I know how I recorded it.

19 Q. So you feel that you're otherwise competent to testify  
20 about the circumstances surrounding the creation of this song?

21 A. Yes.

22 Q. Thank you.

23 I want to talk a little bit about your collaboration  
24 with Amy Wadge.

25 Kim, if you could pull up the songography.

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Sheeran - Cross

1           What we have here is a list of all the songs that he's  
2 written.

3           MR. ZAKARIN: Where is this from?

4           MR. FRANK: I believe it's Wikipedia.

5           MS. FARKAS: We don't agree to this. We have no idea  
6 where it's from, and we've never seen it before, so nope.

7           MR. FRANK: Well, we don't --

8 BY MR. FRANK:

9           Q. Mr. Sheeran, I'll represent to you in going over your  
10 songography that it appears that you are credited with writing  
11 something along the line in excess of 160 songs that have been  
12 released. Does that sound correct to you?

13 A. I have no idea.

14 Q. And it appears in looking at your songography, it looks  
15 like you've collaborated with musicians, producers, songwriters  
16 to the point where you have at least 150 people participating  
17 in the writings of the songs that you've released, is that  
18 fair?

19 A. I'm a songwriter. It's my job to write songs, collaborate  
20 with songs, work with musicians, work with publishers. It's  
21 been my job for -- I couldn't give you a specific time when it  
22 was officially my job, but I'm a songwriter.

23 Q. I understand.

24           Do you ever write songs by yourself?

25 A. Yes.

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Sheeran - Cross

1 Q. How often would you say that you do that?

2 A. It depends.

3 Q. In reviewing your song list, it looks like you have credit  
4 for songs where you wrote them yourself only about 25 percent  
5 of the time. Does that sound correct to you?

6 A. I have no idea.

7 Q. OK. You were asked the other day in your testimony about a  
8 song called "Galway Girl." Do you recall that?

9 A. Yes.

10 Q. "Galway Girl" was a commercially successful song, correct?

11 A. Again, it depends how you quantify commercial success.

12 Q. Appears from the writing credits that 11 people  
13 participated in the writing of "Galway Girl." Did 11 people  
14 sit in a room together and write this song?

15 A. Yes.

16 Q. All together, 11 people?

17 A. It's a folk band called Beoga who had a song called "Minute  
18 5," and the sample of "Galway Girl" that, I guess, like fiddle  
19 and -- fiddle and uilleann pipe and stuff, Irish pipe. And  
20 there's a preexisting song called "Minute 5" on their album  
21 "How to Tune a Fish." And there is six or seven members of  
22 them, and they were recording at my studio in Suffolk for my  
23 song "Nancy Mulligan," which is also about my grandmother.  
24 And, yeah, they were recording that. We started writing  
25 "Galway Girl" outside. I came in and said, could you think of

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Sheeran - Cross

1 something over this? And then I said, could you use the riff  
2 from "Minute 5" on it? So that's why there's a few writers on  
3 that song is because I did it with a large folk band who I  
4 credited for the song.

5 Q. You're familiar with the song "Lay It All on Me" that you  
6 wrote, correct?

7 A. Yeah.

8 Q. And would it surprise you to know that there are 16 people  
9 credited with the writing of that song?

10 A. Again, I wrote it with a German-based band called  
11 Rudimental. There's five or six members of that band. Yeah,  
12 there's -- dude, you're like literally just bringing up --  
13 songwriters write songs with other songwriters. This is, like,  
14 a common thing. It's not -- look at any credit list on -- look  
15 at the Grammy album of the year, and you go and look on the  
16 credits for that, it is a common thing to have many songwriters  
17 and producers work on an album. You're not, like, breaking new  
18 ground here.

19 Q. How do you go about assigning a songwriting interest  
20 pursuant to a scenario where there's 16 people who contributed  
21 to the song?

22 A. If you've written the song, you get a credit.

23 Q. So you divide it 16 different ways?

24 A. No.

25 Q. How do you divide percentages based on contributions with

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Sheeran - Cross

1 16 people?

2 MS. FARKAS: Objection. Irrelevant.

3 MR. FRANK: I think, your Honor, respectfully, we're  
4 trying to get some insight into the song --

5 THE COURT: Sustained.

6 MR. FRANK: Thank you, your Honor.

7 BY MR. FRANK:

8 Q. After a song like -- I'm sorry, when you have a  
9 multi-writer situation like "Galway Girl," "Lay It All On Me,"  
10 or even "Thinking Out Loud," how do you ensure that other  
11 persons involved in the writing process aren't bringing in  
12 their own influence and potentially copying others?

13 MS. FARKAS: Objection. Also irrelevant.

14 MR. FRANK: Respectfully, it's directly relevant.  
15 That's what at issue in this case: Two people writing the song  
16 together. One of them -- one of them, obviously, was  
17 influenced by --

18 MS. FARKAS: OK. First of all, please stop testifying  
19 about things that are not anywhere in the record anywhere. And  
20 if you want to ask him about the songs at issue, why don't you  
21 ask him about the songs at issue?

22 MR. FRANK: I just did.

23 THE COURT: It's a hypothetical question in some  
24 respect, but it goes to a point in the case, and I'll allow it.

25 BY MR. FRANK:

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Sheeran - Cross

1 Q. I'll repeat the question, Mr. Sheeran.

2           When you have a multi-writer situation like "Galway  
3 Girl", "Lay It All On Me," and even "Thinking Out Loud," how do  
4 you ensure that the other persons involved in the writing  
5 aren't bringing in their own influences and potentially copying  
6 other songs?

7 A. I don't know.

8 Q. You don't have any process or protocol in place for that?

9 A. My process and protocol is I do what's honest to me. And I  
10 guess when you're in a room with two, three other people, you  
11 assume that they're going to do the same thing. But as far  
12 as -- you're questioning me. So as far as me, it's my morals.

13 Q. Right. So you have no way of controlling what other  
14 influences other people might bring in and if they copy?

15 A. No. And that's, like, got me before. There's been songs  
16 that have cropped up from other people. As I said before, if  
17 you sing over a backing track, that backing track might have  
18 somewhere down the line, but this isn't what we're talking  
19 about here. We're talking about two people in a room with a  
20 guitar writing a song.

21 Q. Now, with regard to your songwriting process in general, I  
22 believe you testified earlier that you've written as many as  
23 eight to ten songs in a day, is that correct? Did I hear that  
24 correctly?

25 A. I -- yeah, I can write -- I can write songs.

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Sheeran - Cross

1 Q. Fair enough.

2 Now, when you say you write eight to ten songs in a  
3 day, does that mean that these are fully realized songs with,  
4 you know, two verses, a pre-chorus, a bridge, a chorus, the  
5 whole thing?

6 A. Yeah, if I'm writing that many songs in a day, it's usually  
7 over a backing track. The most recent album I've made I worked  
8 with Aaron Dessner from The National who makes fully formed  
9 backing tracks. And he'll send you a folder of backing tracks,  
10 and you then would write a song over that. So you can work a  
11 lot quicker because you're not having to think of the chords.  
12 He's sending you a fully formed track. You write the first  
13 chorus, first chorus, and then it's done, and you move on to  
14 the next one. But in terms of me sitting down with a guitar  
15 and being like, what chords should I play, what should this  
16 song be about, I don't think I could do that many songs in a  
17 day, but it's very simple to write over backing tracks.

18 Q. How often would you say that you incorporate this scenario  
19 of backing tracks as opposed to creating your own music?

20 A. I'm a songwriter. Like, I write songs all the time. They  
21 could be for me; they could be for other people; they could be  
22 for me and other people. There's no set way of doing anything.

23 Q. You indicated the other day, I think it was Thursday, you  
24 felt as a songwriter if the song didn't come to you or wasn't  
25 fully realized within about an hour or two that it wasn't worth

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Sheeran - Cross

1 pursuing. Do you recall that testimony?

2 A. Uh-huh.

3 Q. I'm sorry. Is that --

4 A. Yes, sorry.

5 MS. FARKAS: Objection, your Honor. I think it  
6 mischaracterizes the testimony a bit.

7 Q. Fair enough. Did I misunderstand what you were trying to  
8 say?

9 A. Sorry. Repeat the question.

10 Q. You gave some testimony about how long it takes to write a  
11 song and whether that would influence whether it was  
12 worthwhile, I think. But I want to make sure I understand what  
13 the point you were trying to make.

14 A. Yeah, I think if you take too long on anything, you start  
15 overthinking it, and you lose the initial -- I don't know how  
16 to describe it, like, the creative spark. If you start  
17 overthinking, that creative spark, the spark goes, and then you  
18 start running in circles and trying to chase it again.

19 And largely, creatively, the best songs that I've  
20 written have been in a short period of time because you don't  
21 overthink it. You just go in, write the lyrics you write, you  
22 use the chords you use, and you produce it, and it's done. But  
23 if you spend a week on one song, you overthink it, and it might  
24 not be good at the end of that week. It's better just to write  
25 songs without the process of is this good or is this not good,

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Sheeran - Cross

1 and then see if it's good afterwards.

2 Q. Thank you for that. Brings me to my next question.

3 What happens to all of these songs, these eight or ten  
4 songs that you write? Where are they? Have you released them  
5 all?

6 A. No, clearly not.

7 Q. You write across multiple genres, correct, folk, pop, hip  
8 hop, etc.?

9 A. Yes.

10 Q. When you're writing across these multiple genres and with  
11 multiple writers and contributors, do you have any process to  
12 ensure that you're not cutting corners and borrowing previously  
13 existing material?

14 A. I mean, I've definitely used some stuff that I've come up  
15 with before in other songs. That's quite a common thing where  
16 there will be a song that I might have written, and then I  
17 would take a melody from that, from my song. That's a common  
18 thing.

19 Q. And I think you testified in your deposition to that  
20 phenomenon. You recall the song "The Rest of Our Lives,"  
21 correct?

22 A. Yes.

23 MS. FARKAS: Objection, your Honor. This has been  
24 ruled upon, and he's -- he's treading into some territory that  
25 your Honor said was prohibited.

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Sheeran - Cross

1                   MR. FRANK: We're actually not going into that  
2 territory. We're asking about him giving -- nonrelated to that  
3 territory. We may want a sidebar for that so we can address it  
4 so I don't -- but, your Honor, we're just asking about him  
5 voluntarily giving credit to a fellow songwriter, which he  
6 testified to without objection at his deposition. We're not  
7 bringing up any other issues.

8                   THE COURT: Yes, I'd like to talk to you about that.  
9 Come up.

10                  MR. FRANK: Thank you, your Honor.

11                  (Continued on next page)

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Sheeran - Cross

1 (At sidebar)

2 THE COURT: About what have I already ruled on?

3 MS. FARKAS: So there was an issue -- can you hear me  
4 OK?5 There was an issue in this case about prior claims,  
6 prior infringement claims on other songs, and you ruled that  
7 that was inadmissible.8 THE COURT: Yes, that's irrelevant. Are you going  
9 into that?

10 MR. FRANK: No.

11 MS. FARKAS: So I think on this particular song there  
12 was a -- to the extent that he's simply using the song to show  
13 that Ed Sheeran gave credit to Amy Wadge on this song for her  
14 previous stuff, I'm fine with it being limited to that.

15 MR. FRANK: And that is exactly what we're doing.

16 THE COURT: OK. No problem, then.

17 MR. FRANK: Yes, that is exactly what we're doing.

18 THE COURT: You had the exercise of coming up here.

19 MS. FARKAS: It's good to see you.

20 MR. FRANK: Thank you, your Honor.

21 (Continued on next page)

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Sheeran - Cross

1 (In open court; jurors present)

2 MR. FRANK: May it please the Court?

3 BY MR. FRANK:

4 Q. I believe the last question I posed to you, Mr. Sheeran, is  
5 regarding the song "The Rest of Our Lives" that I believe you  
6 wrote for Faith Hill and Tim McGraw. Do you recall that?

7 A. I didn't write it for them. I wrote it, and then they cut  
8 it.

9 Q. But you wrote the song itself, correct?

10 A. I was a writer on the song, yes.

11 Q. And at some point in time after you wrote the song and  
12 submitted it to Mr. -- Ms. Hill and Mr. McGraw, did you have a  
13 revelation about something about the song that made you give  
14 credit to Amy Wadge?

15 A. No, I had a revelation whilst we were writing the song in  
16 the studio. And I said, guys, as we're writing this song, this  
17 sounds like a song that me and Amy wrote before. So if we're  
18 going to finish this song, we have to cut her in.

19 Q. So that was contemporaneously while you were writing the  
20 song?

21 A. Yes.

22 Q. But you were copying a song, at least in some respects,  
23 that you wrote with Ms. Wadge?

24 MS. FARKAS: Objection.

25 A. No.

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Sheeran - Cross

1 MS. FARKAS: Mischaracterizes his testimony.

2 A. No. I had written a song with Amy that had a similar  
3 melody, and I said, as we were writing the melody, this is  
4 quite close to a song that me and Amy had written. So if we're  
5 going to finish it, we have to cut her in.

6 Q. In what way would you describe it as being close? What  
7 were the similarities between the songs?

8 A. I haven't heard that song since I wrote it. I have no  
9 idea.

10 Q. If I represent to that you had testified in your deposition  
11 that it was a vocal melody that you wrote with Ms. Wadge...

12 A. I assume it would be a vocal melody, yeah.

13 Q. What was the song that you had written with Ms. Wadge  
14 previously?

15 A. I have no idea.

16 Q. OK. Thank you.

17 I wanted to get into the process of writing "Thinking  
18 Out Loud. You indicated in your deposition you were familiar  
19 with "Let's Get It On" before you and Ms. Wadge wrote "Thinking  
20 Out Loud," correct?

21 A. Of course.

22 Q. Ms. Wadge, do you know one way or the other as you sit here  
23 whether or not she was familiar with Ed Townsend or Marvin Gaye  
24 or "Let's Get It On"?

25 A. She's going to sit here later. You can ask her. I can't

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Sheeran - Cross

1 answer for her.

2 Q. Fair enough.

3           Would you have considered Marvin Gaye to be an  
4 influence?

5 A. No.

6 Q. You did mention earlier, I believe, that Stevie Wonder was  
7 an influence, correct?

8 A. Of course, yeah.

9 Q. Now, we've heard the story of Ms. Wadge coming to your  
10 house to assist you -- for you to assist her with writing her  
11 15th song to complete her contract. Is that why she was there?

12 A. I mean, there's many reasons why Amy visited. Amy's a  
13 friend of mine. She came to catch up. She came to see my  
14 parents. She came for me to play my new album to her. She  
15 came to complain about the deal she was in at that time and  
16 whether we could get a way to get her out of it. There's no  
17 specific reason why she was there. There were many reasons.

18 Q. And I believe that the story goes that you're in the  
19 shower, and Ms. Wadge was doing what writers do, strumming a  
20 guitar, is that correct?

21 A. At some point in that evening I took a shower, yes.

22 Q. And Ms. Wadge was strumming a guitar when you took a  
23 shower?

24 A. Amy, when we're writing -- we wrote last week in the  
25 studio, for instance, and she would get on the piano and then

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Sheeran - Cross

1 hum something. And then you'd either go, Let's try something  
2 else, or, I like that. So she was strumming the guitar and  
3 humming. And I remember hearing it and going, That sounds  
4 good. We should finish that.

5 Q. I want to be clear about what happened next. Did you sit  
6 down and start writing the song, or did you go to dinner first?

7 A. I remember going to dinner with my parents that night, and  
8 I remember finishing the song that night. Again, I can't  
9 remember specifics. It was nine years ago.

10 Q. Do you remember specifically what chords Ms. Wadge was  
11 playing that caught your attention?

12 A. The chords for "Thinking Out Loud."

13 Q. OK. What chords were those? Did she play exactly the same  
14 chords that are on the studio recording that ended up on the  
15 studio recording?

16 A. They are the chords for "Thinking Out Loud," yes.

17 Q. That's for the verse and the opening guitar part, correct?

18 A. That's for the verse and the chorus and the interlude, and  
19 the -- yeah, it's not the same chord sequence all the way  
20 through.

21 Q. Right, that's what I'm trying to get to. Was she  
22 playing -- at any time when you got out of the shower, did she  
23 play the bridge section?

24 A. No. We would have come up with that later.

25 Q. Let me back up. You said she was humming something. What

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Sheeran - Cross

1 was she humming?

2 A. Melody, I assume.

3 Q. Did she actually have any -- at the time when she was  
4 humming, was she associating it with any words? Was there  
5 anything coming out of her mouth other than humming?

6 A. I mean, sometimes when Amy writes, yeah, she'll have a  
7 motif or something or a word. It really differs from time to  
8 time.

9 Q. Do you remember if she had any words at the time or just  
10 humming?

11 A. I don't recall.

12 Q. Now, this particular guitar chord progression, the four  
13 chords that we're speaking about, do you know if Ms. Wadge had  
14 come up with these or this pattern before she got to your  
15 house, or did she just come up with it in the moment?

16 A. I know from speaking to Amy since that it's a chord  
17 progression that she'd used many times busking and had used in  
18 many songs that she'd written prior us writing it. It's a very  
19 common chord progression.

20 Q. Do you know of any songs Ms. Wadge used it in previously  
21 for herself?

22 A. No. I'm sure she'll tell you later when you interview her.

23 Q. Who actually wrote the bridge to the song?

24 A. We wrote the bridge.

25 Q. You say "we." You just simultaneously came up with it

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Sheeran - Cross

1 together? Who contributed what to the bridge?

2 A. Songwriting is not -- you haven't got a ledger while you  
3 write songs and go, oh, you came up with that line, and I came  
4 up with this line. It's a collaborative process. You sit  
5 there and you write the song together, and then afterwards  
6 you've written the song together. It's mine and Amy's name on  
7 the credits. We wrote the song together.

8 Q. I understand that's your testimony, but are --

9 A. That's the truth, man. It's not my testimony. That's the  
10 truth.

11 Q. I understand.

12 Are there any particular lines in the song lyrics that  
13 you can attribute that Amy wrote herself or that you wrote  
14 yourself?

15 A. Again, like, you're not understanding what songwriting is.  
16 Songwriting is not -- you haven't got someone there right next  
17 to you jotting down everything that you say and, oh, that's  
18 what you wrote and that's what you wrote. That isn't how it  
19 works. It's a collaborative process.

20 Q. Would you agree with me that in the songwriting process,  
21 sometimes you'll come up with something and like it but not  
22 necessarily use it right away, like a line or a title of a song  
23 or a musical passage? And you might think, this is really  
24 cool, but I don't know where to put it.

25 A. I guess it's possible, yeah.

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Sheeran - Cross

1 Q. Do you do that in your writing process, do you have sort of  
2 lyrical fragments or musical passages that you kind of put to  
3 the side and bring in when you find a song it might work for,  
4 or is everything new or fully realized on the spot?

5 A. When it's song's created, it's usually created on the spot.  
6 I've had songs like "Shivers" where I've written a chorus, and  
7 then a day later I've gone, scrap that verse; let's rewrite  
8 another verse and do something different. There's so many ways  
9 to write songs. It's a collaborative process.

10 Q. So if I understand your testimony correctly, it was fully  
11 realized. You come back from dinner, and you and Amy write the  
12 whole song, all of the lyrics, right there on the spot?

13 A. I don't -- I don't recall whether -- what I recall is we  
14 started it before dinner and we finished it after dinner. So I  
15 don't know what was written before dinner and what was written  
16 after dinner. I remember we started the song; we went to  
17 dinner; we finished the song. Again, we didn't have a ledger  
18 where we were going, oh, do you know what? We've written one  
19 line, so let's go to dinner. It doesn't work like that.

20 Q. So "Thinking Out Loud," I believe, and correct me if I'm  
21 wrong, is comprised of two full verses, a chorus, a bridge,  
22 the -- you wrote all of that between the time before dinner and  
23 after dinner?

24 A. Yeah. It's verse, bridge, chorus, verse, bridge, chorus,  
25 guitar solo, chorus, outro.

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Sheeran - Cross

1 Q. So the question being is all of that totally realized  
2 before and after dinner?

3 A. I don't know what's so unbelievable about being able to  
4 write a song in a couple of hours. Like, I do this as a job.  
5 This is my profession. Like, I do this every single day. I  
6 don't know what's unbelievable about that.

7 Q. I understand.

8 So after you finished the song, there was at some  
9 point where you recorded it, correct?

10 A. Yes.

11 Q. And how did you go about recording it?

12 A. I recorded it.

13 Q. I mean, did -- did you use specific equipment to do that?

14 A. Recording equipment.

15 Q. OK. It was my understanding that you used an iPhone, is  
16 that correct?

17 A. This is the thing, what are you talking about? Are you  
18 talking about recording the song, or are you talking about  
19 recording the written song?

20 Q. Talking about recording the demo right after you finished  
21 with Ms. Wadge?

22 A. Yeah. And if you listen to the demo, I'm not playing a  
23 minor chord there. I'm not playing an A7.

24 Q. And I understand that, but we're not here on what you were  
25 playing --

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Sheeran - Cross

1 A. That is actually why we're here. We're here for the song,  
2 the song being created. Is the song the same chords? And it's  
3 not.

4 Q. I understand.

5 So you recorded the demo right after you finished it  
6 with Amy that night in February of 2014?

7 A. I assume so, yes. We recorded it on an iPhone. That's  
8 what you do when you finish a song.

9 Q. And you -- what did you do with the recording after --  
10 after that, if anything?

11 A. Probably listened to it.

12 Q. Did Amy Wadge appear on the recording at all?

13 A. She would have been playing guitar and singing, yes.

14 Q. If I understand correctly, you no longer possess that  
15 iPhone, do you?

16 A. I haven't had the phone since 2015.

17 Q. So that's a yes, you no longer possess that phone with the  
18 original recording?

19 A. I have no idea. I have no idea.

20 Q. Have you seen it since 2015?

21 A. I know we sent you the original recording that you have  
22 that's timestamped, so it does exist.

23 Q. I understand your comment with regard to the recording.  
24 I'm asking if you have the iPhone.

25 A. I have no idea.

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Sheeran - Cross

1 Q. Thank you.

2 I believe you previously asserted that "Thinking Out  
3 Loud" was always called the Van Morrison song because it  
4 reminded you of Van Morrison general style and specifically  
5 "Crazy Love," is that fair?

6 A. I never referred to it as that. My record label referred  
7 to it as that.

8 Q. Have you ever previously been in the practice of giving  
9 songs working titles during the writing and production process?

10 A. Yeah, that's what you do when you start a new session is  
11 you will write whatever. When I've written with Aaron for this  
12 new album, a lot of those songs are called the place you're in,  
13 so it could be like Suffolk or Hudson. That's usually the  
14 working title before you've actually got anything of what the  
15 song is called. It's usually called something random.

16 Q. Have you ever named songs other songs that you've written  
17 after other artists who you think emulate or that the song  
18 resembles?

19 A. I don't understand the question.

20 Q. Let me ask you this: Have you had working titles -- can  
21 you give me examples of the working title of some other songs?

22 A. Hudson, Suffolk, New York -- wherever you're in making the  
23 song, that is usually the working title of the song.

24 Q. You've indicated that your record company named "Thinking  
25 Out Loud" the Van Morrison song?

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Sheeran - Cross

1 A. They referred to it as the Van Morrison song. It was  
2 called "Thinking Out Loud."

3 Q. Has anyone referred to any of your other songs by an artist  
4 that it reminded them of?

5 A. You'd have to ask those people. I have no idea.

6 Q. I'm asking whether you've referred to a song that you've  
7 written for --

8 A. I usually refer to the songs I've written by the title I've  
9 written them because I've written them.

10 Q. What about "Shape of You"?

11 A. What about "Shape of You"?

12 Q. Did you refer to it by a title?

13 A. It was originally called "TLC," originally, but that wasn't  
14 the working title of the song. That was what the song was  
15 called originally.

16 Q. Why was -- why was "Shape of You" called "TLC"?

17 A. Correct. We interpolated "No Scrubs" in the pre of it.

18 Q. "No Scrubs," the song by TLC?

19 A. Yes. And the original words before *Van the man on the*  
20 *jukebox* was *TLC on the jukebox*, originally. It was meant to be  
21 sung by a girl group called Little Mix, and that was the idea,  
22 that she would sing this song called "TLC."

23 (Counsel confer)

24 MR. FRANK: Your Honor, I wanted to show Mr. Sheeran  
25 an exhibit, but the defendants on the pretrial stipulation have

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Sheeran - Cross

1 objected to it. So I did not want to publish it without the  
2 Court's permission. If I may, we'd like to approach to discuss  
3 it with you in a sidebar to determine whether we can publish it  
4 or not.

5 THE COURT: Well, let's recess for lunch, and let  
6 the --

7 MR. FRANK: Fair enough, your Honor.

8 THE COURT: Be back at 2:15.

9 (Jury excused)

10 THE COURT: I think we can do this in the robing room  
11 when you're ready.

12 MR. FRANK: Yes, your Honor. We're prepared whenever  
13 you are.

14 THE COURT: OK.

15 (Continued on next page)

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Sheeran - Cross

1 (In the robing room)

2 THE COURT: We're here at your behest.

3 MR. FRANK: Yes, your Honor. Thank you very much.

4 I'm handing you what has been marked previously as Plaintiff's  
5 Exhibit 103.

6 MR. ZAKARIN: Can I see?

7 MR. FRANK: Yes, I've got copies for everybody.

8 THE COURT: Is this what you're talking about, the  
9 partial stip you mentioned?

10 MS. FARKAS: No, no, he finished that, what we came up  
11 to you the first time, about that song.

12 MR. ZAKARIN: No, what this, I think, relates to, your  
13 Honor, if I can, there is a note from an email from Mr. Sheeran  
14 to his manager in April 2015. First line says: Simon Cowell  
15 thinks -- I think he means thinks -- is absolutely bollocks, or  
16 things absolutely bollocks. I haven't even met him by that  
17 point.

18 MS. FARKAS: It's halfway down the first page.

19 MR. ZAKARIN: I'm sorry, your Honor. On the first  
20 page you'll see there is an email from Ed Sheeran about halfway  
21 down.

22 MS. FARKAS: It's the second redaction. Do you see  
23 the second redaction, and it's right under that.

24 THE COURT: Let me take a look at it.

25 MR. ZAKARIN: Sure.

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Sheeran - Cross

1 MR. FRANK: Certainly.

2 THE COURT: Of course, it starts back here.

3 MR. FRANK: Yes, your Honor. It's a string, but the  
4 main point of interest, really, is the middle one that  
5 Mr. Zakarin pointed out.

6 MR. ZAKARIN: I can actually hand it from my copy, if  
7 I can -- OK.

8 THE COURT: This is an exchange of emails between whom  
9 and whom?

10 MR. ZAKARIN: The one in question is there's an  
11 exchange between Stuart Camp, who is Ed's manager who was on  
12 the stand briefly last week, and Mr. Sheeran in 2015. And  
13 there was some chatter on the Internet about the claims. And  
14 what this -- the issue here is Ed is responding --

15 THE COURT: Let me see.

16 MR. ZAKARIN: Ed is responding to something about  
17 Simon Cowell which was untrue.

18 THE COURT: Let me take a look at that.

19 MR. ZAKARIN: Sure. But it's the second line beneath  
20 that that is what I want to address.

21 THE COURT: The first one is the 11:13 -- 11:33,  
22 starting here, right?

23 MR. FRANK: That's correct, your Honor.

24 MR. ZAKARIN: Yes.

25 THE COURT: Is this something you were showing me the

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Sheeran - Cross

1 other day, Mr. Crump?

2 MS. FARKAS: Yes.

3 MR. CRUMP: I attempted to. I don't think we got that  
4 far.

5 THE COURT: Huh?

6 MR. CRUMP: I attempted to. I don't think we got that  
7 far, Judge.

8 MR. FRANK: And that was not included in what -- the  
9 other emails that Mr. Crump attempted to show were not listed  
10 as exhibits. This has been listed.

11 THE COURT: Well, I glanced at some of the other  
12 papers he showed me, and now it looks familiar from that.

13 MR. FRANK: Yeah.

14 MR. ZAKARIN: This was indeed one of them, your Honor.

15 THE COURT: I didn't concentrate on it.

16 MR. ZAKARIN: Right.

17 THE COURT: Why is it interesting to us now?

18 MR. ZAKARIN: Can I articulate what at least our  
19 concern is, your Honor?

20 THE COURT: Yes.

21 MR. ZAKARIN: There was a claim -- as your Honor will  
22 recall from the discussion before, there was some -- a claim  
23 was raised by Marvin Gaye III back in 2015, and they -- the  
24 plaintiffs here also made their claim around then. And there  
25 was some internal talking about getting expert advice, getting

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1 musicologists, and that was done. And they were talking among  
2 themselves. And there was all sorts of also Internet chatter  
3 about stuff that wasn't true, and that's what they were  
4 addressing.

5 But what Ed said here is in talking about the song,  
6 it's -- "it's more Van than Marvin," when he's talking about  
7 what the style or sound is, the drums, which are out of this  
8 case, and that's what our concern is.

9 THE COURT: I see.

10 MR. ZAKARIN: Yeah, the drums make it sound like  
11 Marvin, and that's not in this case. The drums are not in this  
12 case. And bringing them in through this side door on stuff  
13 that is extraneous seems wrong.

14 THE COURT: What do you want to ask him about it?

15 MR. FRANK: Your Honor, I just want to ask him if -- I  
16 just want to ask him if this is his email and if he  
17 recognized -- he recognized similarities with Marvin Gaye and,  
18 if I can, as an influence.

19 If I can correct Mr. Zakarin, respectfully, when  
20 Mr. Sheeran -- if you read the context of the sentence, I  
21 understand that the drums in "Let's Get It On" and bass are  
22 out. We get that. But Mr. Sheeran's not talking about "Let's  
23 Get It On," he's talking about his own recording. He's saying  
24 the drums in his own recording sound like Marvin Gaye, and  
25 that's probative of copying. Their whole defense is

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Sheeran - Cross

1 independent creation. This shows that he understood that there  
2 was -- there was an influence there. So I believe it's an  
3 admission against interest, and it's admissible.

4 MR. ZAKARIN: Two --

5 MR. FRANK: Respectfully.

6 MR. ZAKARIN: A year and a half --

7 THE COURT: Let me think for a minute.

8 MR. ZAKARIN: OK, your Honor. I'll address it  
9 afterwards.

10 THE COURT: When he says "it's more Van than Marvin,"  
11 what's he responding to?

12 MR. FRANK: He's responding to his -- his manager  
13 asking about his influences or asking about --

14 THE COURT: Well, show me.

15 MR. FRANK: Up above, right above it there's an --

16 MS. FARKAS: That's after.

17 MR. ZAKARIN: I'm sorry.

18 MR. FRANK: He's responding to the email below from  
19 his manager Stuart Camp, and the email goes into the next page.

20 MS. FARKAS: And what about that is --

21 MR. ZAKARIN: What it is on the next page, your Honor,  
22 the Stuart Camp email that he's responding to says "online  
23 claim that the song was written at the request of Simon Cowell  
24 based on Marvin Gaye." Online claim. And he responds to it,  
25 he says: The Simon Cowell thing is absolutely bollocks, which

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1 is an English term for nonsense.

2 THE COURT: I understand.

3 MR. ZAKARIN: I know, your Honor. And that he hadn't  
4 even met Simon Cowell. Then he goes, "It's more Van," which is  
5 Van Morrison, "than Marvin. The drums just make it sound  
6 Marvin." And that's not an admission of anything. It's a  
7 response to the online chatter, which has nothing to do with  
8 this case, and the drums have nothing to do with this case.  
9 That's why they're trying to drag in the drums, as I said,  
10 through this side door. He's responding to an email from his  
11 manager which is talking about Internet chatter.

12 THE COURT: When they say the song, they're talking  
13 about "Thinking Out Loud"?

14 MR. FRANK: That's correct.

15 THE COURT: And that's what Sheeran would take it as  
16 meaning. What's the significance of written at the request of  
17 Simon Cowell --

18 MR. FRANK: Nothing.

19 THE COURT: -- based on Marvin Gaye?

20 MR. FRANK: We don't think that's significant at all.

21 THE COURT: I'm asking that question. I'd like the  
22 answer to it.

23 MR. FRANK: Oh, why it's significant? Well, if he did  
24 in fact do that, that would suggest he was attempting to write  
25 a song in the spirit and genre of "Let's Get It On," because

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Sheeran - Cross

1 Marvin Gaye's known for that.

2 But we are not -- we don't think that's particularly  
3 important. What we're interested in is Mr. Sheeran  
4 acknowledging that the drums and "Let's Get It On" sound like  
5 Marvin Gaye. That's what -- that's the point we're making.

6 THE COURT: Well, I know, but the thing that -- the  
7 claim that seems to be going around is that it was -- "Thinking  
8 Out Loud" was made at the request of Simon Cowell on Marvin  
9 Gaye. When did Marvin Gaye die?

10 MR. FRANK: He died in the mid to late '80s.

11 MR. ZAKARIN: Yeah.

12 MR. CRUMP: 1984, I believe.

13 MR. ZAKARIN: He was killed by his father in the -- I  
14 think in the '80s.

15 MR. CRUMP: 1984.

16 THE COURT: And this is 2015?

17 MR. CRUMP: Yes, sir.

18 MR. ZAKARIN: And Mr. Sheeran had not even met Simon  
19 Cowell as of that point in time. This was just wild  
20 speculation on the Internet, which is rife with speculation.

21 MR. CRUMP: Your Honor, I think Mr. Sheeran can  
22 explain that to --

23 THE COURT: Why would Marvin Gaye, co-author of "Let's  
24 Get It On," suggest that Sheeran write a song that would  
25 infringe Let's Get It On," if that's the claim?

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Sheeran - Cross

1                   MR. FRANK: No, that's -- what's being said, there was  
2 speculation that -- or a rumor -- and I agree with Mr. Zakarin  
3 about this -- there was some kind of rumor on the Internet that  
4 Simon Cowell from -- is it "America's Got Talent" or something  
5 like that --

6                   MR. ZAKARIN: Other side got his own company.

7                   MR. FRANK: -- "X Factor," that he's a musical  
8 impresario that -- he approached Mr. Sheeran to write a song in  
9 the style of Marvin Gaye. That was a rumor on the Internet.  
10 And his manager is asking him if that was true, and Mr. Sheeran  
11 is saying, no, that's not true. All of this came up as a  
12 result of someone from the Marvin Gaye Estate had made an  
13 inquiry about the similarities in the two songs based on the  
14 Internet scuttlebutt, as it were, and then Mr. Sheeran  
15 responds. He says the claim about Simon Cowell, which again  
16 we're not -- we're not interested in. What we're interested in  
17 is him acknowledging that it sounds like Marvin Gaye. That's  
18 the only part that we wanted to present.

19                  THE COURT: Well, that's a comment on Marvin Gaye.  
20 It's not a comment about the song.

21                  MR. FRANK: Well, I believe he was saying -- he's  
22 saying that -- well, they're talking specifically about the  
23 song, and Marvin Gaye's the performer. So I think he  
24 clearly -- it's reasonable to -- to ascertain that he clearly  
25 means "Let's Get It On" because that's what prompted this

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Sheeran - Cross

1 exchange in the first place.

2 MS. FARKAS: A lot of leaps.

3 THE COURT: Do not worry about this as it's a bit  
4 premature chest-beating from someone connected to the Marvin  
5 Gaye Estate who may -- who simply made an inquiry as to whether  
6 we'd ever got a musicologist to compare "Thinking" to "Let's  
7 Get It On."

8 What's the significance of that?

9 MR. FRANK: It's probative of copying.

10 THE COURT: What?

11 MR. FRANK: It's probative of copying.

12 THE COURT: How?

13 MR. FRANK: Because he acknowledges the similarities  
14 in the songs.

15 MS. FARKAS: A year after he --

16 MR. ZAKARIN: He's not acknowledging any similarities  
17 in the song. He's saying the drum -- it's more Van than Marvin  
18 style, and the drums make -- the drums just make it sound  
19 Marvin. The drums, not the song, which -- and the drums are  
20 not part of the song.

21 MR. FRANK: The drums of "Thinking Out Loud."

22 MR. ZAKARIN: The drums make it sound Marvin.

23 MS. FARKAS: They're also making a significant leap  
24 that if songs sound alike in any way that that's some admission  
25 of copying, which is a completely unsupported leap.

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1                   THE COURT: It is nowhere near an admission of  
2 copying.

3                   MR. ZAKARIN: We agree, your Honor.

4                   MR. CRUMP: Couldn't the jury decide that, your Honor?

5                   MR. ZAKARIN: In other words --

6                   THE COURT: How do you get an admission of copying out  
7 of this?

8                   MR. FRANK: Well, he didn't specifically say it, but  
9 it's certainly indicia that he believes that the songs are  
10 similar.

11                  MR. ZAKARIN: That's not at all what he says.

12                  THE COURT: It's not even that.

13                  MR. FRANK: If he says that -- if he's responding  
14 directly to an inquiry about "Let's Get It On" and he says the  
15 drums sound like Marvin --

16                  THE COURT: No, he's referring -- he's referring to  
17 somebody else who was making the kind of claim that you make,  
18 and the question was, did we ever get a musicologist to analyze  
19 it? And it's in that setting, not this one. Rule 403, I'm  
20 afraid --

21                  MR. FRANK: Yes, your Honor.

22                  THE COURT: -- controls this.

23                  MR. FRANK: Yes, your Honor.

24                  MR. ZAKARIN: You want that back?

25                  THE COURT: You're raising your finger, Mr. Crump. Is

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Sheeran - Cross

1 this to compliment me or --

2 MR. CRUMP: I was going to ask to be heard, but if the  
3 Court has made their decision, I won't bother.

4 THE COURT: No, I'm interested in hearing your view.

5 MR. CRUMP: Your Honor, defense asked 30 times, Did  
6 you copy this song? in their direct examination of them.

7 THE COURT: It's a pretty important question.

8 MR. CRUMP: That's the only question we're trying to  
9 pose to him as well.

10 THE COURT: Yes, I understand that, but I'm saying  
11 this is so remote and disconnected to that that it has no  
12 probative value at all, and its capacity for doing mischief is  
13 a waste of time, all the things said in Rule 403.

14 MR. CRUMP: And the only thing I would add, your  
15 Honor, in conclusion, they asked about copying. He  
16 explained --

17 THE COURT: Gaye was dead when this was written.

18 MR. ZAKARIN: So was Ed Townsend.

19 THE COURT: So was who?

20 MR. ZAKARIN: So was Ed Townsend.

21 THE COURT: So was Townsend.

22 MR. CRUMP: But that doesn't stop contemporary people  
23 from copying dead people's music.

24 THE COURT: It's really not proof of anything, and it  
25 falls under Rule 403. You can make much of it, but it takes an

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Sheeran - Cross

1       imaginative lawyer to do it, and even then it doesn't close any  
2       gaps.

3                    MR. CRUMP: We understand the Court's ruling.

4                    MR. ZAKARIN: Your Honor, we've eaten into your lunch  
5       hour, so what time do you want to come back?

6                    THE COURT: We come back at 2:15.

7                    (Lunch recess)

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N511GRI2

1 AFTERNOON SESSION

2 2:22 p.m.

3 (In the robing room)

4 MR. FRANK: Your Honor, the reason why we're here is  
5 we mentioned to your clerk, your law clerk, Maggie, that we  
6 wanted to make it known for the record that we had some  
7 concerns about the impartiality of I believe it's Juror No. 3  
8 — young lady; I believe her last name is Neis. She's a  
9 23-year-old. She has been exhibiting behavior during this  
10 trial that shows anything but impartiality. She's been dancing  
11 and bopping and doing some other things that go above and  
12 beyond, I think, and suggest that she may have made up her mind  
13 or be very biased in favor of Mr. Sheeran, and we wanted to  
14 register our concern with that. We're not raising a formal  
15 motion to disqualify her at this time, but we did want to put  
16 the Court on notice of our concern.

17 MR. ZAKARIN: Your Honor, I mean, I'm watching the  
18 jurors like anybody else is watching the jurors. I see, when  
19 music is being played, some of them I can see may be singing or  
20 humming along with music, and that's about all I'm seeing.  
21 It's a music case. I don't think that says anything other than  
22 they're listening to music.

23 MS. FARKAS: Yes. I haven't seen a single person sing  
24 or dance, but maybe I — I'm surprised to hear this, but maybe  
25 I missed it.

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1           THE COURT: She sometimes follows Mr. Sheeran with her  
2 eyes, indicating at least approval.

3           MR. FRANK: Yes, your Honor.

4           THE COURT: To my mind, it doesn't even rise to the  
5 level of a suspicion of bias. It's simply what seems to be a  
6 very common reaction to Mr. Sheeran. But if you're not moving  
7 to disqualify her. . . You could, because we have a spare. We  
8 have seven at the moment. It would take us down to six. And  
9 if you did that, and I was inclined to disqualify her, I think  
10 I would do so only on a stipulation, if necessary, that a  
11 verdict of five would be accepted.

12          MR. FRANK: Yes, your Honor.

13          THE COURT: Because we might come to that. And I  
14 wouldn't likely put us in a position where we were faced with  
15 that. But since you're not, I think the best thing to do is  
16 everybody keep monitoring her.

17          MR. FRANK: Thank you, your Honor.

18          THE COURT: It's hard to take action merely on body  
19 action, unless it's an assault.

20          MR. ZAKARIN: I haven't seen her assault anybody.

21          MR. FRANK: We would stipulate to that.

22          MS. RICE: We would.

23          THE COURT: Okay. We'll remain aware of it.

24          MR. FRANK: Thank you, your Honor. We appreciate  
25 that.

N511GRI2

Sheeran - Cross would show nothing.

1                   THE COURT: It's a good thing to do anyway. I can  
2 tell you I think if that indicates bias, what about Juror  
3 No. 5, who is like the sphinx?

4                   MS. RICE: True.

5                   THE COURT: He's the commissioner for the New York  
6 City Department of Buildings, I think it's called.

7                   MR. FRANK: I think that's correct, yes.

8                   THE COURT: He's certainly a stoic.

9                   MS. FARKAS: Yes. I'm waiting for some reaction out  
10 of him and I've yet to get it.

11                  MR. FRANK: Thank you, your Honor.

12                  MR. ZAKARIN: In the current environment, it's  
13 understandable why he

14                  (Recess)

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N511GRI2

Sheeran - Cross

1 (In open court)

2 THE COURT: Good afternoon.

3 (Jury present)

4 MR. FRANK: May it please the Court. Thank you, your  
5 Honor.

6 BY MR. FRANK:

7 Q. Good afternoon. Welcome back, Mr. Sheeran.

8 A. Good afternoon.

9 Q. I wanted to revisit, if we could, some of the testimony you  
10 provided earlier with regard to the song "The Rest of Our  
11 Life." I believe it's your testimony that when you were  
12 writing it, you realized that you had taken something from a  
13 song that you wrote with Amy Wadge and gave her credit.14 A. No, not like — sorry. Not like taking something, just  
15 that it sounded like something that I'd written.16 Q. Did you — when you were writing "The Rest of Our Life,"  
17 was it your intent or did you purposely take something from  
18 that previous song?

19 A. No.

20 Q. So would you concede that it's possible for you to copy  
21 something subconsciously?

22 A. Is it possible?

23 Q. Yes.

24 A. Possibly.

25 Q. Thank you.

N511GRI2

Sheeran - Cross

1           We've spoken quite a bit about Van Morrison and the  
2 contention that "Thinking Out Loud" was a Van Morrison song.  
3 And you may have answered this — I apologize if you have —  
4 but did you actually give Van Morrison any type of writing  
5 credit on that song?

6 A. Van Morrison didn't write that song. I wrote that song.

7 Q. I understand. So the answer would be no?

8 A. Well, yeah, I wrote the song.

9 Q. And I think you testified —

10 A. Can I just — sorry — interject. We're talking about  
11 similar chords to similar songs. I've already shown you how  
12 many songs have the chord sequence. That's why we're here.  
13 Even if you get to a point where the jury side with you, that  
14 yes, Mr. Townsend owns these chords, you've then got 57 songs  
15 that came prior to this that they're going to be like, hang on,  
16 no, I've used these chords before. So what I'm saying is,  
17 people don't own chords. It's common building blocks for all  
18 songs, these chords, that date back however long. You know,  
19 rhythm and blues is 12-bar blues. Does "Hound Dog" sound like  
20 "Johnny B. Goode"? Similar chords, right, but has "Hound Dog"  
21 infringed on "Johnny B. Goode"?

22 Q. I understand, but the question —

23 A. I don't think you do, though.

24 Q. The question was whether or not you gave Van Morrison  
25 credit for —

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Sheeran - Cross

1 A. I didn't credit Van Morrison to "Thinking Out Loud" because  
2 Van Morrison didn't write "Thinking Out Loud." I wrote  
3 "Thinking Out Loud" with Amy Wadge.

4 Q. And I believe you gave some testimony earlier about meeting  
5 Van Morrison and him telling you that he liked your song?

6 A. I've met Van Morrison a few times, yes, and he does like my  
7 music.

8 Q. During one of those encounters with Van Morrison, did he  
9 communicate to you that he specifically liked the song  
10 "Thinking Out Loud"?

11 A. Yeah, that was while I was having breakfast with him.

12 Q. Okay. So what precipitated the encounter? Did he call you  
13 up and say, *I like the song, I'd like to have breakfast?*

14 A. No, it was actually a really funny story. I was playing in  
15 Belfast, and I went out for a drink that night. And I got in  
16 about 4:00 in the morning, and I was woken up to a phone call  
17 at 6:00 in the morning saying, *Van Morrison is in the lobby; he*  
18 *would like to have breakfast with you.* And I instantly hung  
19 up, and was like, don't be silly, no, he's not. And I got a  
20 phone call a few minutes later, saying, *No, it's actually him.*  
21 And so I walked out there, had a really quick shower, went  
22 downstairs. It was him. And we chatted for three hours. I  
23 ate a salmon bagel and said, *Keep in touch.*

24 Q. And during that conversation when I guess you were having  
25 breakfast, did Van Morrison point out any similarities he

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Sheeran - Cross

1 thought existed between any of his songs and "Thinking Out  
2 Loud"?

3 A. I think he was very aware that I was obviously influenced  
4 by him because I was a fan of his music, yeah, but there's a  
5 difference between influence and what you're saying.

6 Q. Respectfully, I'm not asking whether he was aware. I'm  
7 asking whether he told you that he thought there were  
8 similarities between some of his songs and "Thinking Out Loud."

9 A. Not specifically, no. But as you can see, at least seven  
10 of the songs have similar chords, so like he would obviously  
11 think that I had been influenced at some point.

12 Q. Thank you. Was "Thinking Out Loud," from your perspective,  
13 was it commercially successful?

14 A. Again, all people's different views on commercial success  
15 differ.

16 Q. Well, how do you personally view commercial success?

17 A. As I said in my testimony before, if I can play at a  
18 concert and people react to it, then I see it as commercially  
19 successful.

20 Q. I believe you spoke earlier in your testimony about the  
21 so-called Big Four Grammy Awards. Do you recall that?

22 A. Yes.

23 Q. Is that an industry term, is that, the Big Four?

24 A. I grew up in England so the Grammys weren't something that  
25 we were super aware of or that we watched all the time. When I

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Sheeran - Cross

1 came over here, I'd heard that phrase before, yes.

2 Q. Okay. And what are the full Big Four?

3 A. From what I've heard or officially?

4 Q. Your understanding of what the Big Four Grammys are.

5 A. My understanding, are: Album of the Year; Song of the Year,  
6 Record of the Year; and Best New Artist.

7 Q. And isn't it true that "Thinking Out Loud" won best song of  
8 the year?

9 A. Yeah, but I had been nominated before.

10 Q. But you hadn't won before, correct?

11 A. That means nothing.

12 Q. I'm simply asking whether you'd won a Grammy award before  
13 "Thinking Out Loud."

14 A. You're trying to diminish my success prior to "Thinking Out  
15 Loud," and I think Ilene showed you that there was a large  
16 amount of success prior to me winning a Grammy for "Thinking  
17 Out Loud." I've been nominated 13 times. My parents flew over  
18 every year. We thought we were going to win every year. And  
19 one year we won. It's not a big deal.

20 Q. Well, I'd like you to answer, for the record, Mr. Sheeran,  
21 was "Thinking Out Loud" your first Grammy?

22 A. "Thinking Out Loud," yes, was my first Grammy.

23 Q. Thank you.

24 Is "Thinking Out Loud" a song of choice for couples at  
25 weddings and other special events?

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Sheeran - Cross

1 A. I don't know. Probably. Like, it gets used at weddings  
2 just like "Perfect" gets used at weddings or "Kiss Me" or  
3 "Tenerife Sea" —

4 (Reporter interrupted for clarification)

5 THE WITNESS: I'm sorry. I talk very fast. It's just  
6 the English in me. Apologies.

7 Q. Did you just provide an interview to *Rolling Stone* about a  
8 week or two ago in which you specifically said "Thinking Out  
9 Loud" was a wedding song?

10 A. Probably. Do you want to bring up the quote?

11 Q. No. I'm just asking: Do you recall saying that to *Rolling*  
12 *Stone*?

13 A. It was a three-day interview, man. If you bring up the  
14 quote, I'll be able to tell you about it.

15 Q. This is the most recent issue of *Rolling Stone* that you're  
16 on the cover of, correct?

17 A. It was a three-day interview. If you brought it up, I  
18 could tell you.

19 Q. Do you remember when "Thinking Out Loud" was commercially  
20 released?

21 A. It came out with the album.

22 Q. Okay. Does September 2014 sound accurate to you?

23 A. I think it was when the music video was released.

24 Q. And circling back to what we've affectionately referred to  
25 as the Zurich video, do you remember when you actually did that

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Sheeran - Cross

1 video, played that concert?

2 A. No.

3 Q. Does November of 2014 — is that possible?

4 A. I play hundreds of shows a year, man. I don't know.

5 Q. Now per the emails that were shown previously in this case,  
6 as far as your camp, as it were, being on notice of a potential  
7 similarity, that happened in March of 2015, didn't it?

8 MS. FARKAS: Objection. Mischaracterizes the record  
9 and the testimony.

10 MR. FRANK: I'll rephrase the question.

11 Q. Mr. Sheeran, when did you first become aware of the fact  
12 that there were claims being made as to the similarities  
13 between the two songs at issue in this litigation?

14 A. I don't know.

15 Q. It would have been after that concert in Zurich, wouldn't  
16 it?

17 A. I assume it was after the song was released, yeah.

18 Q. So at the time you played the Zurich medley, you weren't  
19 aware that anyone had made any claims at that point in time  
20 that they were similar, correct?

21 MS. FARKAS: Objection. Mischaracterizes the  
22 testimony.

23 MR. FRANK: I'll rephrase.

24 Q. Were you aware at the time you made the Zurich video that  
25 there were allegations of infringement with respect to the two

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Sheeran - Cross

1 songs?

2 MS. FARKAS: Objection. He didn't make a video.

3 Q. Were you aware at the time that you performed the mashup,  
4 or the medley that is at issue in this case, the Zurich — what  
5 we've called the Zurich performance, were you aware at the time  
6 of that Zurich performance that there were allegations of  
7 infringement with regard to the two songs at issue?

8 A. No.

9 Q. Okay. Now you were here, obviously, for Dr. Stewart's  
10 testimony when he spoke of the Zurich video. And he was asked  
11 what his definition was of "interpolation." Do you have an  
12 understanding of what "interpolation" is?13 A. I personally disagreed with his definition of "mashup,"  
14 "interpolation," and "medley." I — that's not to say that  
15 they're wrong, but that's not how I understand them.16 Q. What is your personal understanding or definition of what a  
17 "mashup" or "medley" or "interpolation" is?

18 A. I'm not a musicologist.

19 Q. Okay. So you don't have an understanding at all?

20 A. Well, I thought a mashup was taking two songs and mashing  
21 them up, but according to Stewart — sorry.22 THE COURT: We went into that at some length the other  
23 day.

24 MR. FRANK: Yes, your Honor.

25 Q. Do you think that a mashup is distinguishable from an

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Sheeran - Cross

1 interpolation?

2 A. Again, I'm not a musicologist.

3 Q. Would you agree with me that some songs sound better when  
4 they're combined by virtue of their arrangement, their chord  
5 progression, their harmonic structure; they lend themselves to  
6 being more compatible to combine?

7 A. That depends on what the listener thinks. It's all  
8 subjective, isn't it.

9 Q. Well, by way of illustration, would you, in doing a mashup  
10 or an interpolation, would you play "Purple Haze" by Jimi  
11 Hendrix and "Send in the Clowns" together? Would those be two  
12 things that you'd play together?

13 A. I think I'd enjoy the challenge.

14 Q. Okay. Fair enough. But you would agree with me that it  
15 would be a challenge to combine those two disparate songs  
16 together.

17 A. No, I don't think it would be.

18 Q. But they aren't similar musically, are they?

19 A. You would have to play me both of them.

20 Q. But you are familiar with those songs.

21 A. I'm familiar with "Purple Haze."

22 Q. Now you provided for us on your direct testimony some — I  
23 think you referred to them as mashups, the video of you playing  
24 I guess the song "I See Fire," correct?

25 A. Yeah, there were a few videos, yes.

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Sheeran - Cross

1 Q. Well, I want to talk about specifically first, "I See  
2 Fire." What were the other songs that you played?

3 A. You'd have to show me the video.

4 Q. Okay. So you don't remember as you sit here today what you  
5 just saw a few — about an hour ago?

6 A. I played a bunch of mashups, man.

7 Q. Okay. Well, I wrote it down. It looks like you combined  
8 "I See Fire" with Nina Simone's song "Feeling Good." Does that  
9 sound familiar to you?

10 A. Sounds familiar, yes.

11 Q. Now when you sang the lyrics to "Feeling Good" in that  
12 mashup — we'll call it a mashup, anyway — were you actually  
13 singing the vocal melody of Nina Simone's song?

14 A. What, like the exact melody of the song?

15 Q. Yes.

16 A. I believe so, yeah.

17 Q. Okay.

18 A. That's why you could listen to it and know that it is  
19 "Feeling Good," Nina Simone. If it was a different melody,  
20 you'd be like, hmm, same words, different melody.

21 Q. Well, you've heard the original version of Nina Simone's  
22 "Feeling Good," correct?

23 A. I'm sure that there are a few versions, but I've heard a  
24 version, yes.

25 Q. Okay. Would you agree with me that the music, the

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Sheeran - Cross

1 arrangement, the tempo, the key, the harmonic progression, are  
2 all different in the original version of Nina Simone's "Feeling  
3 Good"?

4 A. Yeah. We covered that earlier. I'm sitting it over my  
5 chords.

6 Q. So essentially what you're doing is you're singing lyrics  
7 from one song over your song, in this instance, correct?

8 MS. FARKAS: Objection. Mischaracterizes the  
9 testimony.

10 Q. Well, you're singing the lyrics for "Feeling Good" over "I  
11 See Fire."

12 MS. FARKAS: Objection. Same objection.

13 A. Yeah, I am. And when I did the mashup in Zurich, I was  
14 singing "Let's Get It On" over "Thinking Out Loud," which also  
15 have different chords, so if the argument is — I don't know  
16 where you're going with this.

17 Q. The other medley that you played I think was a song called  
18 "Don't" and I think "No Diggity." Is that called Blackstreet?  
19 I'm not —

20 A. Yes, by a band called Blackstreet.

21 Q. That's a rap song, correct?

22 A. No. It's got rap on it. It's got Dr. Dre and Lisa "Left  
23 Eye" Lopes, but it's — the song is mostly sung.

24 Q. But you were singing the rap verse.

25 A. No, I wasn't.

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Sheeran - Cross

1 Q. What were you actually singing?

2 A. I was singing the singing verse. You'd be rapping a  
3 rapping verse.

4 Q. Okay. The rap — the singing verse —

5 A. No, I was singing the singing verse; I wasn't rapping the  
6 singing verse.

7 Q. I understand. So you were singing the singing verse of  
8 Blackstreet over your song "Don't"; do I have that correct?

9 A. Over the chords that I played on that version of "Don't."  
10 Those interpolated chords as well. That's not exactly what I  
11 play in the song either.

12 Q. So in that instance you weren't even playing your own song.

13 A. I was having a jam with a musician. I was playing my song,  
14 another song, another one of my songs, and then another song.  
15 Again, I don't know where you're going with this.

16 Q. Well, you provided that as evidence. We're trying to  
17 understand the point you're trying to make.

18 A. But I don't think you understand it.

19 Q. So you're equating what you did in those videos, where  
20 you're singing "No Diggity" with "Don't" and "Feeling Good" and  
21 "I See Fire," those juxtaposition of songs, with what you did  
22 in the Zurich medley; you think that's the same thing.

23 MS. FARKAS: Objection. Mischaracterizes the  
24 testimony.

25 A. How do you think they juxtapose?

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Sheeran - Cross

1 Q. I'm waiting for the judge's ruling.

2 THE COURT: Sustained as to form.

3 MR. FRANK: Thank you, your Honor.

4 Q. You're singing the lyrics of a song over your song with the  
5 Blackstreet — you're singing the lyrics of Blackstreet over  
6 "Don't," or some reasonable facsimile of the chords for  
7 "Don't"; is that fair?

8 A. It's a mashup.

9 Q. Okay. And the "Feeling Good," you're singing the lyrics to  
10 "Feeling Good" over "I See Fire."

11 A. It's a mashup.

12 Q. And you think that is the same thing as what you did in the  
13 Zurich video; you think that those are interpolations as well  
14 in the Zurich medley.

15 A. Yeah, they were mashups.

16 Q. Recently I believe you posted a video on the internet  
17 decrying copyright litigation — do you recall that? — in the  
18 last year or so?

19 A. Doing what?

20 Q. You decrying or complaining about copyright litigation.

21 A. Yeah, when I won my case last year in —

22 Q. I'm not asking about another case. I'm just asking you if  
23 you posted a video.

24 A. Yes, I did post a video.

25 Q. Okay. And in the video I think you were attempting — if I

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Sheeran - Cross

1 understood it correctly, you were attempting to make two  
2 points, one being you said that there's a limit of — there's  
3 only so much you can do with 12 notes. Do you recall saying  
4 that?

5 MS. FARKAS: Objection. I'm not sure where Mr. Frank  
6 is going with this, and I would ask that he not testify.

7 THE COURT: Again, sustained as to form. But I share  
8 Ms. Farkas's puzzlement as to where you're going with this. If  
9 there's a point, I think we should get to it quickly, and if  
10 there isn't, then we should move to something else.

11 MR. FRANK: There is, your Honor. Thank you. I  
12 appreciate that.

13 BY MR. FRANK:

14 Q. Mr. Sheeran, I think your point was, if I understood it  
15 correctly, was that there's only 12 notes and you have limited  
16 tools to be creative; is that correct?

17 A. I mean, there's — you — you're mischaracterizing it.  
18 There's 12 notes, there's chords that people use, there's — I  
19 — yeah, I don't know — where are you going with this?

20 Q. Well, my question to you is that your heroes, Van Morrison,  
21 Eric Clapton, they only had — they had the same tools  
22 available too. Why do you have a problem and not them?

23 MS. FARKAS: Objection, your Honor. Argumentative.

24 MR. FRANK: I'll withdraw the question.

25 A. You're trying to pretend that no artist, this has ever

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Sheeran - Cross

1 happened to. You can go on the internet and find, literally  
2 every big artist has had some sort of claim in the past on  
3 them. You're trying to pretend that I'm the first one this  
4 happened to.

5 Q. I understand. As it relates to your testimony earlier  
6 pertaining to having — I believe you named Aaron Dessner.  
7 He's a producer, isn't he?

8 A. He's a producer and a songwriter and a band member of the  
9 band The National.

10 Q. And he is — isn't he the gentleman who helped Taylor Swift  
11 recently write her new album?

12 A. Yeah, he writes with Taylor.

13 Q. And I think you testified earlier that in connection with  
14 your eight to ten songs a day, you were assisted by Mr. Dessner  
15 because he actually prepared premade tracks for you; is that  
16 correct?

17 A. We've written two premade tracks and we've written from  
18 scratch as well. Again, songwriting, there's no rule to it.

19 Q. In a scenario like that, how do you ensure that Mr. Dessner  
20 hasn't taken from someone else and you're just not aware of it?

21 MS. FARKAS: Objection. Asked and answered. I think  
22 we've been through this line of questioning already.

23 MR. FRANK: Respectfully, I hadn't asked with someone  
24 who prepared premade tracks.

25 A. You are just recycling the same question and trying to get

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Sheeran - Cross

1 a different answer, but it's going to be the same answer.

2 Q. What was that answer?

3 MS. FARKAS: Why don't we let the judge rule on my  
4 objection first.

5 THE COURT: The objection is sustained.

6 MR. FRANK: Thank you, your Honor.

7 BY MR. FRANK:

8 Q. Mr. Sheeran —

9 THE COURT: This all seems to me very far from the  
10 issues in this case.

11 MR. FRANK: I'm almost done, your Honor. I have two  
12 or three more questions.

13 Q. Mr. Sheeran, you're aware of multiple — are you aware of  
14 multiple scenarios on the internet where different groups, such  
15 as Boyz II Men, James August, Home Free, they've all combined  
16 these two songs at issue in this litigation together?

17 A. Yeah.

18 MS. FARKAS: Objection. Hold on a second, please.  
19 Objection. Rule 403. This is completely irrelevant, and it's  
20 hearsay, about what other people did on the internet.

21 MR. FRANK: It's actually not hearsay. He testified  
22 in his deposition —

23 MS. FARKAS: Can you let the judge rule on my  
24 objection, please.

25 MR. FRANK: Well, I can respond to your objection

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Sheeran - Cross

1 before he rules, and I'm doing so.

2 He testified in his deposition as to having seen the  
3 Home Free clip —

4 THE WITNESS: I don't believe I said that, actually.  
5 You can go back and check it.

6 THE COURT: I really can't rule on the objection very  
7 intelligently because I simply don't understand the question.

8 MR. FRANK: I asked if he's aware of the medleys of  
9 the two songs on the internet.

10 THE COURT: Well, you asked about what I take it to  
11 have been a mashup on the internet; is that right?

12 MR. FRANK: Yes, your Honor, several mashups. There  
13 were three that I referenced in my question.

14 THE COURT: What's the significance of it?

15 MR. FRANK: The significance of it, it demonstrates  
16 that musicians all consider these songs to be similar.

17 MS. FARKAS: Objection, your Honor. Move to strike.

18 THE COURT: Sustained. The question isn't whether  
19 musicians consider these songs to be similar but whether the  
20 jurors do.

21 MR. FRANK: I understand, your Honor.

22 BY MR. FRANK:

23 Q. Did you appear with Lady Antebellum — I guess they're now  
24 called Lady A — at a concert several years back and perform  
25 with them?

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Wadge - Direct

1 A. No.

2 Q. Have you ever watched them in concert live?

3 A. I've met them, but I haven't seen them in concert.

4 Q. You didn't see them perform "Let's Get It On" and "Thinking  
5 Out Loud" at a concert you attended?

6 A. No. False information.

7 Q. So if I represented to you that Mr. Camp, your manager, had  
8 a conversation with Lady Antebellum —9 MS. FARKAS: Objection, your Honor. He's just trying  
10 to get to the same thing in every different way, and it's  
11 getting to the point of being a little distressing.12 A. No one is saying you can't sing these songs over each  
13 other.

14 MR. FRANK: I'll withdraw.

15 MS. FARKAS: Yes. There's an objection.

16 MR. FRANK: I'll withdraw the question.

17 I tender the witness, your Honor.

18 MS. FARKAS: Your Honor, I have no redirect.

19 THE COURT: Thank you, Mr. Sheeran. You're excused.

20 (Witness excused)

21 MR. GOLDSMITH: Your Honor, the defense calls Amy  
22 Wadge.

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Wadge - Direct

1 AMY WADGE,

2 called as a witness by the Defendant,

3 having been duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. GOLDSMITH:

6 Q. Good afternoon, Ms. Wadge.

7 A. Hi.

8 Q. We'll get into this in some detail in just a little bit,  
9 but could you please explain to the Court what your role was  
10 with respect to "Thinking Out Loud."

11 A. I was the co-writer of "Thinking Out Loud."

12 Q. Ms. Wadge, are you a defendant in this case?

13 A. I'm not.

14 Q. Do you have an understanding as to whether you have a legal  
15 obligation to be here today?

16 A. I believe that I don't have to be here.

17 Q. Is it important for you to be here today?

18 A. Incredibly important.

19 Q. And why is that?

20 A. Because I'm defending myself, over something that I did not  
21 do, and I'm also here for my friend of 17 years, to defend him  
22 for something that he didn't do as well.

23 Q. I'd like to ask you a few brief background questions,

24 Ms. Wadge. Where are you from?

25 A. I'm from Bristol in the UK.

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Wadge - Direct

1 Q. Where do you currently reside?

2 A. I currently reside in Wales in the UK.

3 Q. Do you live alone?

4 A. I don't. I live with my husband and two children.

5 Q. How old are your children?

6 A. My children are 15 and 12.

7 Q. Did you attend what we refer to in the US as college —

8 A. I did.

9 Q. — in the UK? And where did you go?

10 A. I went to the Royal Welsh College of Music and Drama.

11 Q. What do you do for a living?

12 A. I'm a songwriter.

13 Q. Was there a time where you also were a performer?

14 A. I was for about two decades.

15 Q. How did you first come to develop an interest in music?

16 A. My father was a very big music fan. He didn't play any  
17 instruments, but our house was always full of music growing up  
18 and that's really what sparked my interest.

19 Q. Did there come a point in time when you signed a record  
20 deal?

21 A. I was about 16 when I signed a record deal.

22 Q. And when did you start writing songs?

23 A. I was 9 years old.

24 Q. How did that come about?

25 A. I just did it really as a, you know, way to express myself,

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Wadge - Direct

1 and — and I — my father gave me a copy of *Goodbye Yellow  
2 Brick Road* by Elton John, and I remember kind of thinking I  
3 really want to do that, and so I started writing songs —  
4 probably not very good ones, but — from the age of about 9.

5 Q. Have you released albums of music that you have written or  
6 co-written?

7 A. I have.

8 Q. About how many?

9 A. I would think about eight.

10 Q. Do you play any instruments?

11 A. I play viola, guitar, and piano.

12 Q. You mentioned piano. How old were you when you learned to  
13 play piano?

14 A. I was about 5 years old when I started having lessons, but  
15 I didn't really stick with lessons, so then I was pretty much  
16 self-taught from the age of 12.

17 Q. You mentioned viola. What is that?

18 A. It's like a big violin, so it's between a violin and the  
19 cello.

20 Q. How old were you when you learned to play the viola?

21 A. About 9 years old.

22 Q. And how did you learn to play the viola?

23 A. I'm sorry. I didn't hear the question.

24 Q. How did you learn to play the viola?

25 A. I had lessons.

N511GRI2

Wadge - Direct

1 Q. What about the guitar? How old were you when you learned  
2 to play guitar?

3 A. From about the age of 10, I started to teach myself.

4 Q. I think you mentioned this briefly, but how did you learn  
5 to play guitar?

6 A. I initially wanted to learn the Tracy Chapman album. When  
7 that album came out, I wanted to learn how to play it, and so I  
8 got a book of the chords and I taught myself to play guitar  
9 from the — the chord chart of that book.

10 Q. Did you ever take guitar lessons?

11 A. No, I didn't.

12 Q. How would you describe your skill level on the guitar?

13 A. I'm pretty basic.

14 Q. What do you mean by that?

15 A. I mean, I know the kind of — the very rudimentary chords,  
16 you know, that you can play, but I'm not very good beyond that,  
17 so I can just, you know, play the simple chords and the simple  
18 shapes.

19 Q. Are you familiar with the term "open chord"?

20 A. I am.

21 Q. And can you explain what that is.

22 A. So open chord is just the standard way of playing a chord,  
23 so just — yeah, just a normal, simple way of playing a chord.

24 Q. Can you take a look at the screen, please.

25 A. Yeah.

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Wadge - Direct

1 Q. What are we looking at on the screen here?

2 A. I would understand that to be a D chord.

3 Q. Is that an open chord?

4 A. Yes.

5 Q. Okay. Are you familiar with the term "bar chord"?

6 A. I am.

7 Q. And could you explain what that is.

8 A. A bar chord is when you put your finger sort of along the  
9 fret. And it's not something I can do. My hands are pretty  
10 weak, so I can't really play all of the bar chords.

11 Q. Is what we're looking at on the right on the screen a bar  
12 chord?

13 A. It is.

14 Q. You can play an open chord?

15 A. I can play an open chord, but I'd struggle to play that.

16 Q. Which?

17 A. The bar chord.

18 Q. Okay. Are you familiar with a company named Four Chords  
19 LLP?

20 A. I am.

21 Q. What is that company?

22 A. That's my company where my publishing goes into.

23 Q. And how did the name Four Chords LLP come about?

24 A. It's been a joke from — in my family for many decades,  
25 that I built a career on four chords.

N511GRI2

Wadge - Direct

1 Q. When did that joke start, approximately?

2 A. Probably when I was about 20, I think.

3 Q. And what year was that?

4 A. Well, I'm — so I'm 47, so it's a long time ago.

5 Q. When you write songs, do you typically write alone or do  
6 you collaborate with others?

7 A. I collaborate.

8 Q. You mentioned writing "Thinking Out Loud" — actually,  
9 before we get there, in addition to writing songs for recording  
10 artists to record and perform, have you also written songs for  
11 musicals?

12 A. I have, yes.

13 Q. Could you tell us about some of those musicals.

14 A. It's been my lifelong ambition to write a musical. So I  
15 started really entering into that world about seven or eight  
16 years ago, so I wrote a musical that toured Wales and the UK.  
17 And so, yeah, I've just been signed to write a musical, which  
18 I've just started doing right now.

19 Q. You mentioned "Thinking Out Loud," your writing that song  
20 with Ed Sheeran. Other than "Thinking Out Loud," are there  
21 other songs that you have co-written with Ed Sheeran?

22 A. There are.

23 Q. Approximately how many?

24 A. I would think, before "Thinking Out Loud," about ten.

25 Q. And other than "Thinking Out Loud," has Ed Sheeran recorded

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Wadge - Direct

1 other songs that you have co-written with him?

2 A. He has, yes.

3 Q. Now other than Ed Sheeran, have you collaborated with any  
4 other singers or recording artists?

5 A. I have, yes.

6 Q. Could you name some of those songwriters and recording  
7 artists that we might be familiar with.

8 A. Sure. Pink, Alicia Keys, John Legend, Diana Ross, Andrea  
9 Bocelli —

10 Q. What about Gwen Stefani?

11 A. Gwen Stefani, Camila Cabello, and, yeah, Keith Urban and  
12 lots and lots of artists.

13 Q. Let's go back to Ed Sheeran. When did you first meet Ed?

14 A. I met Ed when he was 17.

15 Q. And around what year was that?

16 A. It was 2008.

17 Q. And how did you meet?

18 A. I signed a small publishing deal in the UK, and I literally  
19 just started my career as a songwriter and I asked them to send  
20 anybody that they thought I should write with, and the very  
21 first person they sent was 17-year-old Ed.

22 Q. What was the purpose of your meeting?

23 A. To write songs.

24 Q. And how old was Ed at that time?

25 A. 17.

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Wadge - Direct

1 Q. How old were you?

2 A. 32.

3 Q. Before meeting Ed did you have any concerns or fears about  
4 writing songs with someone who was around 15 years younger than  
5 you?

6 A. Yes, certainly. I do remember saying to my friends the day  
7 that he arrived, *I'm not quite sure what I'm going to talk to a*  
8 *kid of 17 about for the next three days*, but I quickly realized  
9 it was going to be fine.

10 Q. And how did you and Ed end up getting along?

11 A. We got along very, very well. I think it was an instant  
12 friendship and it was — yeah, it was great.

13 Q. Did you write songs together during those first few days?

14 A. We did. We wrote nine songs.

15 Q. How long did you spend together?

16 A. I think it was over the course of about three days but  
17 probably two and a half days of actually sitting and writing  
18 songs.

19 Q. In your experience is that a large number of songs to have  
20 written in that period of time?

21 A. Absolutely. He's the only person that I would — I would  
22 say I'd write that amount of songs with.

23 Q. And when you first met Ed, what did you think of his  
24 musical ability?

25 A. I still think it now. That he's the most extraordinary

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1 artist I've ever been in the presence of, and I say that with  
2 real confidence.

3 Q. Prior to meeting Ed had you heard any of his music?

4 A. I think that my A&R person — that's the person that talked  
5 to me as a songwriter in the publishing company — she had sent  
6 me one song she'd been introduced to of his, and I remember  
7 listening to that.

8 Q. And what did you think?

9 A. I thought he was great.

10 Q. Now what was the state of Ed's musical career at the time  
11 that you first met?

12 A. I think we connected because we were both in a sort of  
13 similar scenario. I was still getting — even though I had  
14 decided I was going to focus on songwriting, I was doing some  
15 shows, and Ed was doing a lot of shows and was very much at the  
16 beginning of his career and, you know — and, you know, hadn't  
17 signed a deal or anything at that point.

18 Q. And after first meeting Ed did you continue to write songs  
19 together?

20 A. We did, yes.

21 Q. Did you also become friends?

22 A. We did.

23 Q. Was there a point in time where he sort of crashed on your  
24 couch?

25 A. Absolutely. Ed came to my house, and I do remember that he

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1 used to like one particular thing in Wales that we have, curry  
2 with rice and chips, and Ed always wanted to have curry, rice,  
3 and chips, so he'd often come to the house and we'd get that  
4 and we'd sit down as a family, and — yeah, and definitely, he  
5 did stay in my house a fair bit.

6 Q. Prior to writing "Thinking Out Loud" had you received any  
7 musical awards or honors?

8 A. I had won the Welsh Music Awards twice.

9 Q. Do you recall in what years you won the awards?

10 A. I don't, actually, to be totally honest.

11 Q. Does 2002 and 2003 sound accurate?

12 A. Yeah.

13 Q. You mentioned writing around ten songs with Ed before  
14 "Thinking Out Loud." Were any of those songs released  
15 commercially?

16 A. Yeah, five of the songs became the *Songs I Wrote with Amy*  
17 EP, which Ed released quite early, and I did have another song  
18 called "Gold Rush" on his album +.

19 Q. Did *Songs I Wrote with Amy* achieve commercial success?

20 A. Yeah, absolutely.

21 Q. How do you define — in your own mind, how do you define  
22 commercial success?

23 A. Well, I think, you know, it was something that I — even  
24 now, people say to me that they grew up listening to those  
25 songs, and I know that, you know, it did well in the world and

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1 — and it was certainly a huge honor for me to have somebody  
2 like him have an EP that was called *Songs I Wrote with Amy*. So  
3 for a long time I was *Songs I Wrote with Amy* Amy, that lots of  
4 people knew me as.

5 Q. Do you know the name of Ed Sheeran's first full-length  
6 album?

7 A. +.

8 Q. Did you write or co-write any of the songs on that album?

9 A. I wrote "Gold Rush," which was on the deluxe edition.

10 Q. Other than songs you had written with Ed, had any other  
11 songs that you had written or co-written been released  
12 commercially before writing "Thinking Out Loud"?

13 A. No. That was it.

14 Q. I apologize. I might have misstated the question. Did you  
15 write songs with any other artists or songwriters that had been  
16 released commercially before "Thinking Out Loud"?

17 A. I did, yes. I was working quite a lot with somebody called  
18 Lewis Watson and another artist called Shannon Saunders, both  
19 of which were really singles, and an album as well.

20 Q. Let's talk a little bit about "Thinking Out Loud." Do you  
21 recall in what year and month you wrote "Thinking Out Loud"  
22 with Ed Sheeran?

23 A. Yeah, it was February 2014.

24 Q. And geographically speaking, where were you and Ed located?

25 A. I was in Suffolk in the UK, at Ed's house.

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Wadge - Direct

1 Q. Was there anyone else there besides you and Ed?

2 A. No. Just him and I.

3 Q. When in relation to arriving at Ed's house did you write  
4 "Thinking Out Loud"?

5 A. I arrived on a Sunday night, and that song started I think  
6 it was on the sort of late Monday afternoon.

7 Q. And what do you recall about what happened on Sunday and  
8 Monday before you wrote "Thinking Out Loud" with Ed?

9 A. So I arrived quite late on the Sunday evening because it  
10 would be my daughter's birthday party, and Ed actually thought  
11 that I was bringing the family, and so when I arrived, he was a  
12 little surprised it was just me. But the main reason for me to  
13 go to see Ed was he wanted to play me his new album, which was  
14 x, so we sat down and we listened to the whole of the record,  
15 and then he surprised me because a song that we'd written  
16 called "Even My Dad Does Sometimes" is on the deluxe, so it was  
17 a surprise. And then we talked and caught up because I hadn't  
18 seen him for any, like, proper amount of time for a couple of  
19 years because his career had exploded and he was all over the  
20 world, and so we caught up on life stuff and things that had  
21 been going on for about the pair of us.

22 Q. And what was gong on in your personal life at that time?

23 A. So at that time my mother-in-law was in palliative care,  
24 and she ended up dying about a week and a half after I saw Ed,  
25 so that was a very dominant feature of the conversation, and Ed

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Wadge - Direct

1 had just lost his grandfather, and so we had a long  
2 conversation about the fact that his grandmother was so lost  
3 without her partner, and my mother-in-law had lost my  
4 father-in-law 12 years before, and we had a long conversation  
5 about what it is to live your entire life with somebody and  
6 lose them and be able to retain love through all of those  
7 years.

8 Q. Did you also have a discussion regarding your publishing  
9 deal?

10 A. We did.

11 Q. And what did you discuss?

12 A. So I was in a situation that I was in a publishing deal and  
13 I was in conversation for another publishing deal, and to get  
14 to the other publishing deal, I had to have a certain amount of  
15 songs written — it's called minimum commitment — and so we  
16 had a conversation about how many songs I needed to fulfill my  
17 minimum commitment, and so Ed and I had a discussion about —  
18 about where I was really in my career, and — and then he, Ed  
19 being Ed, said, *Right. Well, let's see what we can do.* And he  
20 actually messaged Lewis Watson, who I've mentioned earlier, and  
21 said, *Why haven't you put the song "Halo" on your album?* And  
22 he did it on Twitter. And I remember hiding behind a cushion,  
23 thinking, *This is so embarrassing, your doing this.* But Lewis  
24 actually messaged me and said, *I think you need to come up to*  
25 *London so we can finish that song,* and it made the album.

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Wadge - Direct

1 Q. And before writing "Thinking Out Loud" with Ed during those  
2 few days, did you write any other songs together?

3 A. We did. We — I did a topline with him for Marvin Garrick  
4 — he's a DJ — so we wrote the music and the lyrics to go over  
5 a dance track and — yeah, to my memory, that was the only  
6 thing that we — that we wrote together.

7 Q. Let's move forward to Monday, the day that you wrote  
8 "Thinking Out Loud." How did the writing start?

9 A. So we were going out for dinner with his parents, so Ed had  
10 gone upstairs to have a shower, and to pass the time, I grabbed  
11 a guitar and just started sort of noodling around, and I was  
12 singing a melody with some sort of gobbledegook words and  
13 playing some chords, and I heard a voice from the shower  
14 saying, *What's that?* And then he started singing, "Take me  
15 into your loving arms."

16 Q. And did you end up going out to dinner?

17 A. We did.

18 Q. What happened when you got back from dinner?

19 A. So while we were at dinner, his dad said, *Are you coming*  
20 *back for coffee?* And he said, No. *Amy and I have got a song*  
21 *to finish.* So once we got back, we sat down and then talked  
22 about the ideas that we — I'd started earlier, and then we —  
23 we wrote the song.

24 Q. Approximately what time was it when you got back from  
25 dinner that night?

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Wadge - Direct

1 A. I would have thought it would be before about 10:00.

2 Q. Did you finish the song that night?

3 A. We did.

4 Q. When you finished the song, did you and Ed do anything to  
5 record what you had written?

6 A. Ed recorded it on his iPhone, and so that was the only  
7 recording that existed.

8 Q. And approximately what time was it when you — when Ed  
9 recorded that on his iPhone?

10 A. I would think it would be before midnight, so it was  
11 definitely before midnight.

12 Q. When you and Ed were writing the lyrics to "Thinking Out  
13 Loud," did you have an idea in your mind as to what the song  
14 was about?

15 A. Absolutely. I think, you know, as a songwriter, generally  
16 what tends to happen is you have conversations, and I always  
17 say it's like the words are floating in the air, and I think  
18 both of us knew that we were writing about Ed's grandfather and  
19 my mother-in-law, and Ed was in a new relationship as well, and  
20 we discussed basically long-term love, so that was — that was  
21 definitely what the subject matter was.

22 Q. By the way, was the song called "Thinking Out Loud" that  
23 night?

24 A. It wasn't. It was called "Singing Out."

25 Q. I want to go back a little bit to the beginning of the

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Wadge - Direct

1 writing of "Thinking Out Loud." You're in Ed's house, you pick  
2 up a guitar, and then what do you play?

3 A. I — I just played a few chords that were familiar to me  
4 and then — I'm very much a melody and lyric person, so I  
5 probably paid much more attention to — to the melody that I  
6 was singing and the sort of general words that I was coming up  
7 with, but I was playing a chord pattern that I was very  
8 familiar playing.

9 Q. Do you recall what specific chords you were playing?

10 A. I think it was D, D with F sharp, placed with a bass, G,  
11 and A.

12 Q. And are each of those four chords individually chords that  
13 you were familiar with?

14 A. Yes.

15 Q. Okay. And are each of those four chords individually  
16 chords that have appeared in songs that you had written in the  
17 past?

18 A. Yes.

19 Q. Prior to writing "Thinking Out Loud" with Ed, had you ever  
20 written any other song that included these same chords in this  
21 same order?

22 A. Absolutely. I was in a tour with a guy called Pete Riley,  
23 and we had a song that was actually out at the time called  
24 "Better Than Me" and that I was regularly playing at shows,  
25 and, yes, it was exactly the same chord progression.

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Wadge - Direct

1 Q. To be clear, when in relation to writing "Thinking Out  
2 Loud" did you write "Better Than Me"?

3 A. I wouldn't — I couldn't tell you exactly, but I know that  
4 I was — I would have thought it was the year before that that  
5 album came out, and I know that we were touring that album up  
6 to me writing that song.

7 Q. Did the song "Better Than Me" appear on a commercially  
8 leased album?

9 A. It did, yes, *Afterglow*.

10 Q. At some point in time after writing "Thinking Out Loud,"  
11 did you and Ed discuss whether the song reminded you of any  
12 particular song by any particular artist?

13 A. Once we had written it and Ed started playing it from the  
14 phone, we both said it's like a Van song, a Van Morrison song.

15 Q. What about "Thinking Out Loud" made you think it sounded  
16 like a Van Morrison song?

17 A. I guess the, you know, the subject matter, it was a love  
18 song, it was, you know, an acoustic guitar and — yeah, it just  
19 had — it had the same sort of feel as a Van Morrison song.

20 Q. Were there any particular Van Morrison songs or a song that  
21 you had in mind at that time?

22 A. For me, certainly, "Have I Told You Lately."

23 Q. Do you know whether the chords in "Have I Told You Lately"  
24 are the same as the chords in "Thinking Out Loud"?

25 A. To my knowledge, they are; they're just in a different key.

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Wadge - Direct

1 Q. Do you know whether Ed is a fan of Van Morrison?

2 A. Yeah, he's a huge fan.

3 Q. Have you ever played with him?

4 A. I have, yes.

5 Q. Are you familiar with Shania Twain?

6 A. I am.

7 Q. Are you a fan of her music?

8 A. A big fan.

9 Q. Do you know the song "You're Still the One"?

10 A. I do.

11 Q. Do you know whether the chords to "You're Still the One"

12 are the same as the chords in "Thinking Out Loud"?

13 A. To my knowledge, the first chords are exactly the same.

14 Q. I want to switch gears just a little bit, and this might be  
15 a silly question to ask, but did you listen to music growing  
16 up?

17 A. I did.

18 Q. Just to put a time frame on that — I think you mentioned  
19 it before, but please jog my memory — in what year were you  
20 born?

21 A. I was born in 1975.

22 Q. So you grew up in the '80s and '90s?

23 A. I did.

24 Q. What are your early memories of listening to music?

25 A. So my dad, as I said, was a pretty dominant feature, so in

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1 our house it was constant Elton John, ABBA, Phil Collins, Joni  
2 Mitchell, James Taylor, and I very much took that, you know,  
3 with me into, you know — to my, you know — obviously, when I  
4 was in the '80s and '90s, there was a bit of George Michael and  
5 Tracy Chapman and people that — that I've always very much  
6 loved. Elton John, he's my biggest influence, definitely.

7 Q. What type of music do you like to listen to now?

8 A. Because I have children, they tend to dominate the — what  
9 we play in our house, and so — but I still probably — I love  
10 acoustic music. I'm a very big fan of country music, and I  
11 spent a lot of my life in Nashville, so I think probably my  
12 go-to is things like Kacey Musgraves is the thing I listen to a  
13 lot.

14 Q. What kind of music is Kacey Musgraves?

15 A. Kind of country.

16 Q. Are there any songwriters — I think you mentioned a few,  
17 but are there any songwriters or recording artists that you  
18 consider to be your musical influences?

19 A. I think certainly Joni Mitchell, Tracy Chapman, Elton John,  
20 they would be the really dominant ones, and James Taylor at the  
21 time as well.

22 Q. Amy, at the time you and Ed wrote "Thinking Out Loud," were  
23 you aware of the song "Let's Get It On"?

24 A. I was, yes.

25 Q. Are you familiar with Ed Townsend?

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Wadge - Direct

1 A. Not until this court case.

2 Q. At the time that you and Ed wrote "Thinking Out Loud" in  
3 February of 2014, do you recall if there was any specific music  
4 or artists or songs that you were listening to at that time?

5 A. I mean, again, like I say, because my children were pretty  
6 young, *Frozen* was a pretty permanent fixture in our house, and  
7 — but I know that there were go-to albums, so the same —  
8 Kacey Musgraves, we played a lot in the car, and I'm a big John  
9 Mayer fan, and the kids would pick "Waiting on the World to  
10 Change" because they could say the numbers at the beginning of  
11 the song, so whenever we got in the car, they always wanted to  
12 listen to the numbers song.

13 Q. The numbers song being?

14 A. "Waiting on the World to Change."

15 Q. How many times do you think you've listened to "Waiting on  
16 the World to Change"?

17 A. Hundreds.

18 Q. Do you know how to play the chords from "Waiting on the  
19 World to Change" on guitar?

20 A. I don't, no.

21 Q. Did you know how to play the chords to "Waiting on the  
22 World to Change" in February of 2014?

23 A. I didn't.

24 Q. So even though you've listened to that song hundreds of  
25 times, you don't know the chords.

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1 A. No, I don't.

2 Q. If you wanted to learn the chords to that song on guitar,  
3 or any song on the guitar, for that matter, how would you go  
4 about doing that?

5 A. The kids would often ask me, *Mum, can you play this so we*  
6 *can sing it?* So I will listen to it, I'll get the guitar or  
7 try and work out the key, I'll stop it, I'll start it, and  
8 eventually I will kind of manage a way of playing it, and it  
9 probably won't be particularly accurate, but I — that's how  
10 I've always done it.

11 Q. How many times would you need to listen to a song in order  
12 to be able to play the chords or some version of the chords?

13 A. Probably three or four times.

14 Q. You mentioned Tracy Chapman earlier, that you taught  
15 yourself to play guitar by listening to a Tracy Chapman album  
16 and that she's one of your biggest musical influences. If you  
17 had to take one Tracy Chapman song as your favorite, what would  
18 it be?

19 A. Probably "Baby Can I Hold You."

20 Q. Do you know how to play the chords to that song on the  
21 guitar?

22 A. I do, because the only exception with that is when I taught  
23 myself to play, I did have the chord book, and in those days  
24 that was how you did it. But they don't — you don't really  
25 get chord books anymore. So on that occasion I remember

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Wadge - Cross

1 teaching myself the actual chords, so I could probably still  
2 play that.

3 Q. Okay. Now I want to take you back in time to February of  
4 2014 on the day that you and Ed co-wrote "Thinking Out Loud."  
5 If someone handed you a guitar that day and asked you to play  
6 the chords to "Let's Get It On," would you have been able to do  
7 that?

8 A. I really wouldn't have, no.

9 Q. Amy, did there come — at a certain point in time did you  
10 come to learn that a claim had been made that "Thinking Out  
11 Loud" copied from "Let's Get It On"?

12 A. I did, yeah.

13 Q. And what was your reaction when you learned of that claim?

14 A. It was pretty devastating and pretty frightening, because  
15 it's something that we did not do and — yes, and it was pretty  
16 devastating; I've got to be honest.

17 MR. GOLDSMITH: No further questions, your Honor.

18 CROSS EXAMINATION

19 BY MS. VIKER:

20 Q. Good afternoon, Ms. Wadge.

21 A. Good afternoon.

22 Q. Can you hear me? My name is Katherine. I'll ask you a few  
23 questions, and I'll be as quick as I can. But before I start,  
24 I need to check something.

25 A. No problem.

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Wadge - Cross

1 Q. Thank you for your patience.

2 A. No problem.

3 Q. You ready?

4 A. I'm ready.

5 Q. I'll do my best to be brief.

6 A. No problem.

7 Q. If I heard you correctly, you would describe yourself as a  
8 songwriter.

9 A. That's right.

10 Q. Is that also the same as an artist?

11 A. I mean, probably not, because I think — I was a  
12 singer/songwriter, and at that point I probably saw a fuller  
13 picture as an artist. I think a songwriter is kind of in a  
14 service industry, and my job is to actually help artists become  
15 who they want to be.

16 Q. Okay. Now you do both music and lyrics, correct?

17 A. Yes.

18 Q. And if I heard you, you do viola, guitar, and piano.

19 A. Yes.

20 Q. So strings. Or do you think piano is percussion?

21 A. Well, strings. I think strings.

22 Q. I'm with you on that one.

23 So I don't want to embarrass you, but if I heard you  
24 correctly, you said you were 47.

25 A. That's right.

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Wadge - Cross

1 Q. Okay. I wasn't going to ask.

2 A. I'm proud of that.

3 Q. I'm 53.

4 You said you've been writing songs since you were 9,  
5 so if my math is correct, that's 38 years you've been writing  
6 songs?

7 A. Yes.

8 Q. Yes. And roughly — I know you don't have an exact number,  
9 but roughly how many songs do you think you've written since  
10 you were 9?

11 A. I would think thousands.

12 Q. Thousands?

13 A. Yeah.

14 Q. At the time that you met Mr. Sheeran, it's my understanding  
15 — please correct me if I'm wrong — that you were signed to  
16 BDi/Bucks Music Publishing?

17 A. That's right.

18 Q. And you were a new mom and wanted to travel less and focus  
19 on them.

20 A. That's right.

21 Q. I get it. I have six.

22 Now did Bucks Publishing, did they pay you to work  
23 with Mr. Sheeran?

24 A. I signed a very small publishing deal with them, which was  
25 10,000, but that was — that was to kind of pay my way as a

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Wadge - Cross

1 songwriter, so not strictly, you know, that they paid me to  
2 write with Ed.

3 Q. Okay. So from that first session, that first time that you  
4 met, it's my understanding that that is what led to a series of  
5 songs that were written over three days; is that right?

6 A. That's right.

7 Q. And then of those songs, five of them were then selected to  
8 go on an EP —

9 A. Mm-hmm.

10 Q. — I'm sorry — *Songs I Wrote with Amy*?

11 A. That's right.

12 Q. Do you recall the year you all wrote those songs?

13 A. It was literally when Ed and I met, so it was 2008.

14 Q. 2008. Okay. Correct me if I'm wrong. *Songs I Wrote with*  
15 *Amy* was not released until around April of 2010; is that  
16 correct?

17 A. That's right, yeah.

18 Q. Okay. Any idea why it took two years to put those songs  
19 together?

20 A. I think just because Ed was, you know, out performing and  
21 building his career.

22 Q. Now to the best of your memory how many other songs did  
23 y'all write that didn't make it onto that EP?

24 A. I think it was, you know — it was nine over those couple  
25 of days, so there would be four that didn't make it on.

N511GRI2

Wadge - Cross

1 Q. Okay. And would you agree — he had stated in his depo,  
2 but would you agree they didn't release those songs because  
3 those just weren't the best?

4 A. I mean, probably, yes.

5 Q. I'm assuming — and tell me if I'm wrong — that you're no  
6 longer with Bucks Music Publishing.

7 A. That's right.

8 Q. So as a songwriter, how are you compensated for your work?

9 A. So, I mean, obviously, when you sign a publishing deal, you  
10 get a certain amount of money, which is, you know, designed to  
11 make it possible for you to be able to travel and pay your  
12 bills to write songs, but essentially when a song comes out,  
13 then you will see royalties within about two years of that song  
14 coming out.

15 Q. All right. When you wrote with Mr. Sheeran, not only for  
16 *Songs I Wrote with Amy* but over these years and in particular  
17 "Thinking Out Loud," was it always assumed that Mr. Sheeran  
18 would be the one releasing the songs, since he was the artist  
19 and you were the songwriter?

20 A. Not always, no.

21 Q. Okay. Explain to me how you would make that decision.

22 A. So, I mean, perhaps not in the — in the time that, before  
23 we wrote "Thinking Out Loud," but certainly in — subsequently,  
24 when I write with Ed, there's often a time we write an awful  
25 lot of songs. So a couple of years ago we wrote 11 songs

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Wadge - Cross

1 together in two days, and to be honest, then it's — it's  
2 always quite nice because I might hear that somebody else is  
3 going to release one of those songs if Ed doesn't want — if he  
4 doesn't want that particular song. So sometimes we'll even  
5 say, let's not write for you today, let's write for someone  
6 else.

7 Q. Were you aware that in his depo Mr. Sheeran said he would  
8 never pay a writer to work?

9 A. I wasn't aware of that.

10 Q. How does that make you feel?

11 A. Nothing at all.

12 Q. Okay. If you don't write a hit, are you still able to be  
13 compensated as a songwriter?

14 A. No.

15 Q. Let me switch gears a little bit.

16 In addition to the work that you've done with  
17 Mr. Sheeran and some of these other artists, do you have any of  
18 your own original copyrighted songs?

19 A. I do, yes.

20 Q. Now do you believe that as a songwriter, or even as an  
21 artist, that they have a value to you?

22 A. I do, yes.

23 Q. All right. Are they part of how you care for your family?

24 A. They are, yes.

25 Q. And would you want your family, your daughters, to have the

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Wadge - Cross

1 right to that work after you pass?

2 A. Yes, I would.

3 Q. All right. Would you call it like part of your legacy,  
4 even?

5 A. Yes, I would say that.

6 Q. And is it something that you also left behind for the world  
7 to enjoy, not just your immediate family?

8 A. Absolutely.

9 Q. Little piece of maybe immortality?

10 A. Absolutely.

11 Q. And something you'd like your family to be proud of.

12 A. Definitely.

13 Q. Now you were aware — and we kind of touched on this —  
14 that Mr. Sheeran claims that when — and again, I don't mean to  
15 sound "claim" as in made up, but just the understanding is that  
16 you were playing chords, a chord sequence, and that is what  
17 inspired "Thinking Out Loud"?

18 A. Absolutely.

19 Q. Correct. Okay. Now he noted — and I want to know if you  
20 understand the same — that the final version from the demo,  
21 we've been calling it the kitchen demo. If I called it the  
22 kitchen demo, would that make sense to you?

23 A. Yes, it will.

24 Q. Perfect. The kitchen demo was the same chords as the  
25 commercial; is that correct?

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Wadge - Cross

1 A. My understanding, yes.

2 Q. Okay. And do you agree with him that it was four chords  
3 that you had been playing that get used in love songs?

4 A. Yes, I do.

5 Q. All right. Now this was pulled up early. Do you recall  
6 doing a declaration?

7 A. I don't, no.

8 MS. VIKER: Your Honor, may I approach?

9 Your Honor, may I approach the witness.

10 THE COURT: Yes.

11 Q. I just want you to have this in your hands.

12 A. Okay. Thank you.

13 Q. This was previously admitted. I want you to take a moment  
14 and review it and make sure that's the declaration that you  
15 wrote and signed. Well, not that you wrote, but that you read  
16 and signed.

17 A. Yes, that's — that makes sense to me.

18 Q. Perfect. Now I want you to help me understand so that I  
19 can clear up any confusion I may be having. On Number 4,  
20 paragraph 4, when it was completed writing, the song, and ES —  
21 and I understand that to be Ed Sheeran, from your paragraph 3.  
22 Is that correct, ES is Ed Sheeran?

23 A. That's right.

24 Q. — in your presence, recorded a demo of it on his  
25 telephone. Did you sing on that demo? Because I understood

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Wadge - Cross

1 him to say that y'all had recorded it, so could you please  
2 clarify, did you sing or play on that demo recording?

3 A. So I definitely did some backing vocals, just — we were  
4 kind of improvising, so it wasn't like a proper recording, and  
5 I played a terrible guitar solo on it because I did have a  
6 guitar in my hand, but yes, I remember that.

7 Q. We've heard a lot about the inspiration for the lyrics, the  
8 vulnerability that y'all shared with each other, a lot of  
9 emotional bonding. What I'd like to understand and what I'd  
10 like to talk about is what inspired the music. Would you agree  
11 that words need music to go with them to fully capture the  
12 emotion of a song?

13 A. It's a very difficult one for me, because in any other  
14 writing rooms that I'm ever in, I don't — I don't normally  
15 play, and on this occasion, I absolutely played those four  
16 chords, but when Ed and I sat down later, then Ed — Ed played  
17 the guitar because he's a better guitar player than me, so for  
18 me, as a songwriter, I write lyrics and topline, and so I —  
19 I've never been able to think of a song in terms of the music  
20 of it. I always think of the lyrics, and the melody, and  
21 that's — that's honestly my truth.

22 Q. Okay. If you can, if so many songs have these exact same  
23 chords, do you have any thought or opinion as to why the chords  
24 you were playing in that sequence would have been inspiring to  
25 your friend?

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Wadge - Cross

1 A. I don't, and I — I think, again, that Ed responded to the  
2 melody that I was singing, and I think that my voice probably  
3 carried a lot more than the guitar I was playing, and obviously  
4 locked into a key because I was playing those chords, but he  
5 responded himself with a melody back at me, which to me means  
6 that he responded to the melody that I was singing.

7 Q. Were the melodies identical?

8 A. No.

9 Q. Was his different?

10 A. Yes.

11 Q. Was his melody the one that wound up on "Thinking Out  
12 Loud"?

13 A. Yes.

14 Q. If I heard you on your direct, it actually matches. What  
15 Mr. Sheeran had said, as I understood it in his testimony, is  
16 that when he heard it, I believe he testified, *We need to do*  
17 *something with that*, and you said —

18 A. Yeah.

19 Q. — he said something like, *What's that?*

20 A. Yes, he did, yes.

21 Q. Okay. Can you recall what you had been playing?

22 A. I mean, I can recall that I think the — what we — the  
23 song ended up being was those initial chords, and I can  
24 remember certain words that had come to me that Ed and I  
25 definitely developed a bit later on, and I remember the initial

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Wadge - Cross

1 da-da, da-da, da-da, da-da, I remember that, but like I say,  
2 I'm not a great guitar player, and I know that I was just  
3 playing some simple chords that I knew how to play.

4 Q. We talked earlier with Mr. Sheeran about this, and I  
5 believe you touched on it. Mr. Sheeran wrote a song called  
6 "The Rest of Our Life," correct?

7 A. Yes.

8 Q. And you have a songwriting credit on that.

9 A. I do.

10 Q. All right. And there were multiple other writers on that  
11 song in addition to you and him, correct? Is that a yes?

12 A. That's right. Sorry. Yes, yes, that's right.

13 Q. For the record, that's a yes.

14 Okay. Now in his deposition Mr. Sheeran stated that  
15 you did not in fact write on that song.

16 A. I didn't.

17 Q. Okay. You didn't write on the song at all.

18 A. Not at all.

19 Q. Okay. But you get compensation for it, correct?

20 A. I do.

21 Q. Okay. Can you tell me how you learned that you were going  
22 to be compensated for your part.

23 A. I got an email from Ed saying that, *I'm going to insist on*  
24 *giving you 5 percent on this song because there is something in*  
25 *this song that's very reminiscent of "Even My Dad Does*

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Wadge – Cross

1     *Sometimes,"* which is a song I'd written, and I said, *Don't be*  
2     *so silly,* but he insisted.

3 Q. And what was the name of the song again?

4 A. "Even My Dad Does Sometimes."

5 Q. Now do you believe that he had deliberately tried to copy  
6 your work?

7 A. Not at all.

8 MR. GOLDSMITH: Objection. Objection.

9 || Mischaracterizes the testimony.

10 Q. You believe that it was a subconscious thing that he  
11 recognized?

12 MR. GOLDSMITH: Same objection.

13 THE COURT: Well, it's been answered. The answer can  
14 stand. So the objection is overruled.

15 Q. Could you please answer.

16 A. Of course. My understanding is that Ed finished the song  
17 and then heard it back and said — and did exactly what he did  
18 and emailed me straight away and said, *It sounds a little bit*  
19 *like something that you and I had done, and I want to*  
20 *acknowledge that and give you 5 percent.*

21 Q. So he gave you credit where he felt credit was due.

22 A. Absolutely.

23 Q. Is it fair to say — well, isn't it fair to say that there  
24 is more to a song than the chords?

25 A. Of course.

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Wadge - Cross

1 Q. All right. There's harmonic sequence of chords,  
2 anticipation, those configurations, fair?

3 A. Yes.

4 Q. Do you agree with Mr. Sheeran that one can adjust almost  
5 any song to fit just a few chords?

6 A. I'm not as proficient as him, but yes, I do; I do agree  
7 with that.

8 Q. All right. Help me understand. If there are only 12 notes  
9 and a few chords, millions of songs, then why copyright any  
10 song?

11 MR. GOLDSMITH: Objection, your Honor. She's not here  
12 as an expert witness or to opine on the law.

13 MS. VIKER: May I respond.

14 THE COURT: Well, I don't understand that there's a  
15 question pending. Is the question "Why copyright?"

16 MS. VIKER: Yes, sir.

17 THE COURT: Overruled.

18 BY MS. VIKER:

19 Q. Can you please answer, to the best of your ability.

20 A. I truly don't feel confident enough to answer that because  
21 I'm not a music expert, and I don't really know why, if I'm  
22 absolutely honest.

23 Q. All right. Let me ask you this: If there are only seven  
24 notes in a scale — right? We can agree on that?

25 A. Okay.

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Wadge - Cross

1 Q. Mr. Sheeran says that the four chords that are used are the  
2 basic fundamental building blocks to what — to music, right?  
3 You've heard this.

4 A. Yes.

5 Q. Any thoughts then as to what the purpose of copyright is?

6 A. I mean, I think it — the purpose of copyright is to  
7 protect the progress of art. That's what I understand it to  
8 be. And so for me as a songwriter, I don't have many building  
9 blocks, but the building blocks that I've taught myself are the  
10 basic chords, and I've built a career with four chords, and so  
11 that chord might start on a G and go to an E or an A, or it  
12 might start on a D. So for me, it's a very, very difficult  
13 question to answer because I don't have the musical ability to  
14 be able to do anything but just rely on the building blocks of  
15 — of music.

16 Q. All right. Would you agree with this, that copyright  
17 protection allows you to translate your talent into a  
18 profession?

19 A. I don't believe I understand the question completely.  
20 Sorry.

21 Q. It's not a question, really. I'm asking if you agree with  
22 this statement. I'll represent to you it's within the  
23 copyright practice that a copyright protection, for an artist,  
24 songwriter, the creator, allows one to translate your — in  
25 this case your talent into a profession.

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Wadge - Cross

1 A. Yes.

2 MR. GOLDSMITH: Objection, your Honor. I think,  
3 again, this is a legal question, and we're going way beyond  
4 anything relevant.

5 THE COURT: Well, it's not a legal question.

6 Q. Now let me jump again, let's go over —

7 MS. VIKER: Oh, I'm so sorry, your Honor.

8 THE COURT: Do you understand the question, really?

9 THE WITNESS: Not really.

10 THE COURT: Well, if you don't understand a question  
11 really, don't answer it.

12 THE WITNESS: Okay. Thank you. I don't really. I've  
13 got to be honest. Thank you.

14 THE COURT: Don't guess.

15 THE WITNESS: Okay. I'm not going to. Thank you.

16 BY MS. VIKER:

17 Q. Please don't guess.

18 A. No, I won't.

19 Q. I'll try to do better.

20 A. Okay.

21 Q. If there is no copyright protection, that everything is  
22 free game for everyone and everybody, why would you accept a  
23 dollar for your work — a pound? I believe it's a pound where  
24 you come from. Why?

25 MR. GOLDSMITH: Objection, your Honor. It's

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Wadge - Cross

1 argumentative, calls for speculation.

2 MS. VIKER: She is an artist with copyrighted works.

3 It's a fair question.

4 THE COURT: Well, it's sustained under 403.

5 MS. VIKER: Okay. Thank you.

6 BY MS. VIKER:

7 Q. You I believe testified earlier that you've heard of "Let's  
8 Get It On."

9 A. I'm sorry. I didn't hear your question. I'm sorry.

10 Q. Let me try it again. I believe your testimony earlier was  
11 that you were familiar with the song "Let's Get It On."

12 A. I was, yes.

13 Q. All right. And you had heard it prior to writing "Thinking  
14 Out Loud," being a part of writing "Thinking Out Loud,"  
15 correct?

16 A. At some point in my lifetime, yes.

17 Q. All right. Would you agree it's part of an international  
18 playlist?

19 A. Of course.

20 Q. Do you believe it's part of Americana?

21 A. I don't know. I think — I don't know. Americana — my  
22 understanding of Americana is probably slightly different.

23 Q. That's good. That's fair. Let me say this: Did you know  
24 that it was in the American Songbook?

25 A. I didn't, no.

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Wadge - Cross

1 Q. Over here, it actually is used to sell ribs for a  
2 commercial restaurant called Applebee's. Have you seen the  
3 commercial?

4 A. I haven't, no.

5 Q. That's good. It's showing ribs and, "Let's Get It On." I  
6 don't sing. My children told me to stop.

7 But having a limited knowledge of chords, is it  
8 possible that your chord sequence in "Thinking Out Loud"  
9 actually did infringe on "Let's Get It On," deliberate or not?

10 A. No, it's not possible.

11 Q. It's not possible?

12 A. No.

13 Q. Did you as a songwriter check to see if these chords  
14 resembled any other songs?

15 A. No, I did not.

16 Q. Did you recommend that anyone else run a check?

17 A. No, I didn't.

18 Q. Now your oath — and the reason I checked earlier — was to  
19 tell the whole truth. Do you recall that?

20 A. Absolutely.

21 Q. Now it's been represented at this trial in the opening  
22 statement and you have said that you did not have to be here,  
23 you're not a party to the lawsuit, correct?

24 A. Mm-hmm.

25 Q. But isn't it true you are a party to another lawsuit with

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Wadge - Cross

1 this song in this court and these lawyers?

2 A. That's true.

3 Q. Why didn't you disclose that earlier?

4 MR. GOLDSMITH: Objection, your Honor. The question  
5 was never asked.

6 MS. VIKER: I'll withdraw.

7 Q. So in addition to paying your bills with this song as a  
8 professional songwriter, you are here with a vested interest to  
9 help your friend win this case, correct?

10 A. My interest is also for myself, though, to defend myself  
11 against something I didn't do.

12 Q. When did you first learn about this lawsuit?

13 A. I think it was maybe 2016.

14 Q. Is it possible it was 2015?

15 A. It could well be.

16 Q. What kind of discussions have you and Mr. Sheeran had about  
17 this case?

18 A. Not a great deal, actually. We decided a long time ago  
19 that we wouldn't talk about it.

20 Q. Okay. Actually, so I understand, you're in a different  
21 lawsuit as a party, this very same court, over this song, with  
22 these same lawyers, it's just not with this plaintiff, not the  
23 heirs, but you and Mr. Sheeran are not discussing this.

24 A. No, we're not.

25 Q. Are you familiar with the lyrics "You don't need me, I

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Wadge - Cross

1 don't need you"?

2 A. I am.

3 Q. All right. Are you familiar with this: "Gonna be breaking  
4 in to other people's tunes when I chase it and replace it with  
5 the elephant in the room, with a facelift slipping into another  
6 rapper's shoes, using new laces"?

7 A. I am.

8 Q. I'm going to read from "Take It Back," ask you if you've  
9 heard these lyrics: "I'm not a rapper, I'm a singer with a  
10 flow, I've got a habit of spitting quicker lyrics, you know,  
11 you'll find me ripping the writtens out of the pages they sit  
12 in, I never wanna get bitten, 'cause plagiarism is hidden."

13 You've heard that.

14 A. I've heard that.

15 Q. And are you aware of the video at issue — it's been called  
16 the Zurich video — a video of Mr. Sheeran transitioning from  
17 "Thinking Out Loud," "Let's Get It On," "Thinking Out Loud"?

18 A. I have.

19 Q. Have you seen that video?

20 A. I have seen that video.

21 Q. Do you recall if it was done in November of 2014, shortly  
22 after the release?

23 A. I don't recall the times — the time line of that video,  
24 no.

25 Q. I'll represent to you that it was filmed, possibly by

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Wadge - Cross

1 someone in the audience, in November of 2014.

2 A. Okay.

3 Q. Do you recall when "Thinking Out Loud," the video, and the  
4 single were released?

5 A. I'm not completely sure, if I'm absolutely honest. I know  
6 that it was in 2014. Maybe around September of 2014.

7 Q. That's my understanding. So within about two months.

8 Okay. Now you've heard the lyrics on the album + and you've  
9 heard the lyrics about plagiarism, and this video that was done  
10 was done shortly after the release but prior to any lawsuit or  
11 any family member discussing. Are you aware that Mr. Sheeran  
12 testified, after seeing that video, again, done two months  
13 after the release, before the lawsuit, that he would have to be  
14 an idiot to perform a song that he copied?

15 A. I agree with him.

16 Q. All right. Now those are not my words. But have you ever  
17 written a song about plagiarism?

18 A. No.

19 MS. VIKER: I don't have any more questions.

20 MR. GOLDSMITH: Nothing further, your Honor.

21 THE COURT: Thank you, Ms. Wadge. You're excused.

22 THE WITNESS: Thank you so much.

23 (Witness excused)

24 MR. GOLDSMITH: Your Honor, the defense calls Jake  
25 Gosling.

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Gosling - Direct

1 JAKE N. GOSLING,

2 called as a witness by the Defendant,

3 having been duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. GOLDSMITH:

6 Q. Good afternoon, Mr. Gosling.

7 A. Afternoon.

8 Q. We'll go into some detail on this in a little bit, but  
9 could you please tell the Court what your role was with respect  
10 to "Thinking Out Loud."

11 A. I was the producer of the track.

12 Q. Let's do some very quick background questions, please.

13 Where were you born?

14 A. I was born in Ascot in Surrey, England.

15 Q. And where is that in relation to London?

16 A. It's about an hour away from London.

17 Q. Where did you grow up?

18 A. I grew up in Surrey.

19 Q. Where do you currently reside?

20 A. I live near Guildford, which is, again, about sort of an  
21 hour from London.

22 Q. Do you live alone?

23 A. I don't. I have a fiancée, and I have four children.

24 Q. How old are your children?

25 A. 19, 16, and two 12-year-olds.

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Gosling - Direct

1 Q. Did you attend university in the UK?

2 A. I did, yeah.

3 Q. Where did you go?

4 A. I went to Salford University in Manchester.

5 Q. What do you do for a living, Mr. Gosling?

6 A. I'm a songwriter and a music producer, and I have a small  
7 indie label and a publishing company.

8 Q. In simple terms, what does it mean to be a music producer?

9 A. I record the tracks, either if I've co-written a song or if  
10 the song comes to me, I then work with the artist and then  
11 record it.

12 Q. When did you first develop an interest in music?

13 A. When I was very young. My dad was a musician, so I grew up  
14 with music my whole life, basically, so I sort of fell into it.

15 Q. Do you play any instruments?

16 A. I do. I play piano and I sing. And a little bit of  
17 everything, really; bit of drums, bit of guitar.

18 Q. What instrument would you say you're most comfortable with?

19 A. I'd say piano and singing.

20 Q. How did you learn to play the piano?

21 A. I learned to play the piano — my dad was always playing,  
22 so he taught me a lot, and I had piano lessons at school, and I  
23 used to have a, you know, a teacher who would, you know, try  
24 and keep me in time, would often use a pencil on my head. Did  
25 break a few pencils, but — yeah. I survived, yeah.

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Gosling - Direct

1 Q. And you mentioned you also sing. How did you start  
2 singing?

3 A. Well, I was always singing around all the time and I was in  
4 the church choir, so I sang that at the local choir in  
5 Windlesham and also the church choir at school.

6 Q. Have you played in any bands?

7 A. Loads of different bands, yeah. All different styles of  
8 bands, all the way through to growing up and college and stuff.

9 Q. You mentioned you're a songwriter. When did you start  
10 writing songs?

11 A. The first time I wrote a song was when I was about 9. It  
12 was for a girl called Nikki who I quite liked and wrote a song,  
13 put it on a cassette and — yeah. It worked.

14 Q. In addition to writing songs that are recorded by recording  
15 artists, have you written songs for musicals?

16 A. I have. I actually wrote a musical. When I was about 15,  
17 I wrote a musical and it was put on at school and — yeah, it  
18 ended up being put on the Barbican in London as well, which was  
19 a competition, and we came out runners up. I was the youngest.  
20 It was under 30s sort of thing and — yeah, it was really good.  
21 It was like a rock musical about the Civil War.

22 Q. Including songs you've written for musicals, can you name  
23 some songs we might have heard of that you've written or  
24 co-written?

25 A. Yeah. I mean, I wrote a few songs with Ed — "Give Me

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Gosling - Direct

1 Love," "Lego House," which is on an album called +. And the  
2 first other song I wrote was a track called "Wiggle It" for The  
3 Tweenies, which was a sort of kids show which I — yeah.

4 Q. You said "Wiggle It," is that right?

5 A. "Wiggle It," yeah.

6 Q. You mentioned you're also a producer. How did it come  
7 about that you started producing music?

8 A. I sort of fell into it, really, 'cause I was in different  
9 bands, I needed to record the bands that I was in, so it was  
10 the best way to do that. So I learned through trial and error.  
11 I didn't actually go to a — to a college to do music, but —

12 Q. Are you familiar with the term "sound engineer"?

13 A. Yes.

14 Q. What is a sound engineer?

15 A. A sound engineer works with the producer and helps in the  
16 recording process.

17 Q. Did you ever work as a sound engineer?

18 A. I did, yeah. So, yeah, I worked for a guy called Nellee  
19 Hooper, who was an incredible producer, so he was involved with  
20 producing tracks for Madonna, U2, Björk, did a lot of her  
21 albums, and I learned loads from him. I was his engineer,  
22 basically.

23 Q. Do you have a studio where you perform your production  
24 work?

25 A. I do, yes.

N511GRI2

Gosling - Direct

1 Q. Does it have a name?

2 A. Yeah, it's called Sticky Studios.

3 Q. What is the meaning of that name?

4 A. The name came because my dad had a publishing company and  
5 it was called Sticky Songs, songs that stick, and the studio  
6 was like — well, let's call it Sticky Studios, 'cause it sort  
7 of was under that type of thing.

8 Q. And when did you start doing production work at Sticky  
9 Studios?

10 A. I mean, I think sort of, you know, 20 years ago, probably.  
11 I mean, it was something that I — I, you know — I wasn't — I  
12 wasn't that well off, but I needed to, you know, do bits and  
13 pieces, so I used to get lots of different people in the studio  
14 to record, to make money, 200 quid here, whatever it was.  
15 Yeah, that's sort of how I got into it.

16 Q. Where is that studio?

17 A. It's in Surrey.

18 Q. Is it at your home?

19 A. It's in my mum's house. My mum is my landlady and she  
20 keeps upping the rent now and then, so I'm like, all right,  
21 Mum.

22 Q. Who are some other artists and songwriters who you've  
23 worked with that we may have heard of?

24 A. Well, quite a lot. Shania Twain, I did her — not last  
25 album, album before, five tracks on that. Shawn Mendes, I did

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1 his album *Illuminate*. A band called the Libertines, which was  
2 sort of like an indie sort of rock band. And — yeah, there  
3 they are. One Direction. There you go. Those wonderful boys.

4 Q. What about a rapper named Wiley?

5 A. And Wiley, yeah, yeah, I work with him as well a lot.

6 Q. Have you worked with Ben Platt?

7 A. I have worked with Ben Platt, yeah.

8 Q. Let's talk about Ed Sheeran. When did you first meet Ed?

9 A. I first met Ed when he just moved to London, so I think he  
10 was — he just turned 17, and I picked him up from the railway  
11 station with his traveling guitar on his back and — yeah,  
12 that's when we first started working together.

13 Q. How did it come about that you were introduced to Ed?

14 A. It was — it was a couple of things. It was MySpace at the  
15 time, which was like Facebook-equivalent type thing, and he had  
16 a track on there, which I saw, and my publishers also had  
17 mentioned him, and I was like, this is — this guy's pretty  
18 sick. I'd love to work with him.

19 Q. What was the purpose of your first meeting with Ed?

20 A. It was — it was to write a song. We wrote a song called  
21 "The City," which was basically about him moving to London, and  
22 ended up — it was basically — we did it in that one day, and  
23 even the recording was — was used from that day. It wasn't  
24 even changed. And then that made it on his first album +,  
25 basically.

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1 Q. What was the state of Ed's musical career when you first  
2 met?

3 A. I mean, he was very active. The one thing about Ed was  
4 that he worked extremely hard, and for me, he ticks, like,  
5 every box. He was actively gigging all the time. He didn't  
6 have a lot of money 'cause he just moved to London, but to make  
7 money, he would sell all his CDs, and he used to make jewelry.  
8 His mum did jewelry and stuff, and he — if he sold like a  
9 couple of CDs or three CDs, he'd have enough money to, you  
10 know, sort of live off that, basically. Yeah.

11 Q. What was your impression of Ed's musical ability around the  
12 time that you first met?

13 A. I mean, I was blown away, really. I mean, you know, this  
14 sort of red-haired guy who was like, you know, sort of didn't  
15 fit the normal mold for a lot of record, you know, pop stars  
16 type thing, but he just sort of had something very special, and  
17 you know, he rapped as well. And I was like — he would, like,  
18 sing rap. He did a track called "You Need Me, I Don't Need  
19 You," and I was like, this is just crazy, the lyrics were  
20 insane, you know, he was always singing from the heart and  
21 telling stories and stuff, and that's what really blew it away  
22 for me, really.

23 Q. After your first meeting with Ed did you continue to write  
24 songs together?

25 A. We did. Yeah. We did. We spent a lot of time working on

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Gosling - Direct

1 various different things, actually. And that was a really fun  
2 time.

3 Q. Approximately how many songs have you and Ed co-written  
4 together?

5 A. I don't know exactly, but probably in the hundreds, I'd  
6 say.

7 Q. And how many of those were written before "Thinking Out  
8 Loud"?

9 A. I mean, definitely a few hundred, yeah.

10 Q. Let's discuss some of Ed's early music that you worked on  
11 together.

12 To place these questions in some context, can you tell  
13 me if you recall in what year and month "Thinking Out Loud" was  
14 recorded.

15 A. I think it was 2014, February.

16 Q. February 2014 is your recollection?

17 A. I think so, yeah.

18 Q. Are you familiar with the term EP?

19 A. Yes.

20 Q. What is an EP?

21 A. An EP is — stands for extended play, which basically means  
22 it's not quite an album, it's — for a lot of artists, they  
23 like to do an EP before they do an album, so it's — tends to  
24 be a smaller body of work, just — it's a bit like a calling  
25 card. It's a bit like, this is sort of what I'm doing and I'm

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Gosling - Direct

1 working towards an album.

2 Q. Prior to recording "Thinking Out Loud" in February of 2014,  
3 had you and Ed worked on any EPs together that were released  
4 commercially?

5 A. Yes. We had done quite a few.

6 Q. How many?

7 A. I'm not entirely — I think like *Loose Change* was an EP, we  
8 did — aha. *Collaborations No. 5. Songs with Amy*, which is  
9 Amy and Ed did a whole thing together. Yeah. So —

10 Q. What role did you play with respect to each of these EPs  
11 that we're looking at on the screen?

12 A. So I was mainly — well, produced *Loose Change* and *Songs I*  
13 *wrote with Amy*. I don't think I wrote any on *Loose Change*.  
14 And *Collaborations No. 5* was co-written with Ed, and we had  
15 different rappers that featured on the tracks, and we just  
16 spread it a little between us, basically.

17 Q. What was the concept for the No. 5 Collaborations Project?

18 A. The concept was — I think for Ed, it was to — to really  
19 sort of experiment and push himself out of, you know, what he  
20 would do, you know, just on his own material, and it was a lot  
21 of fun, a lot of support from the rap scene as well, and he  
22 loves singing rap, so it sort of worked really well. It was a  
23 good time for us to experiment and try stuff out, really.

24 (Continued on next page)

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Gosling - Direct

1 BY MR. GOLDSMITH:

2 Q. What was the first full length album that Ed Sheeran  
3 released?

4 A. The first full length album was "+".

5 Q. What, if anything, did you have to do with the "+" album?

6 A. So I produced pretty much all of "+". There's one track  
7 that I sort of worked on, but another guy did. So, yeah,  
8 pretty much the whole thing.

9 Q. Did you cowrite any of the songs on that album?

10 A. Yes.

11 Q. Can you identify a few of the songs that you cowrote?

12 A. Yeah. "Drunk," "You and I," "Wake me up," "Lego House,"  
13 "Give Me Love."

14 Q. After the "+" album, what was the next full-length album  
15 that Ed Sheeran released?

16 A. "x."

17 Q. What, if anything, did you have to do with that album?

18 A. I produced sort of half of that album.

19 Q. What are some of the songs or the tracks that you produced  
20 on that album?

21 A. I did one, "I'm a Mess," "Nina," "The Man," "Thinking Out  
22 Loud," yeah.

23 Q. Prior to producing "Thinking Out Loud," had you received  
24 any musical awards or honors either as a writer or a producer?

25 A. Yeah. Yeah, I had.

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Gosling - Direct

1 Q. What were those awards or award?

2 A. ASCAP, cowriter for "Lego House." And, yeah, producer of  
3 the year, I think it was 2013, with *Music Week*, which was  
4 industry magazine and music body, basically.

5 Q. What is ASCAP?

6 A. ASCAP is a royalty collection company based in America, and  
7 they -- like in England you have PRS, but in America you have  
8 ASCAP. You have other ones as well, but I'm a member of ASCAP.

9 Q. Are you familiar with a song called "Little Things"?

10 A. Yes.

11 Q. What is that song?

12 A. "Little Things" is a song that One Direction did, and Ed  
13 wrote that with Fiona Bevan, and I produced that track. That  
14 was one of the tracks that sort of really crossed over, I  
15 think, One Direction into sort of a mainstream market. Before  
16 that it was sort of younger and very poppy and stuff like this.  
17 With this song, it was more of an acoustic song, so it's just  
18 really featuring their vocals. It was a lot of fun to do that.

19 Q. Did that song achieve commercial success?

20 A. Yeah, it did really well, like I said, internationally.

21 Q. Let's go back to "Thinking Out Loud." How did it come  
22 about that you produced the recording of "Thinking Out Loud"?

23 A. How? Well, Ed called me up and he said, Jake, I've got a  
24 banger. I want to get in the studio as soon as possible and  
25 record this song. And I was like, great, well, let's do it. I

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Gosling - Direct

1 think it could have been a couple days or the next day even.

2 I'm not entirely sure.

3 Q. Where was "Thinking Out Loud" recorded?

4 A. It was recorded at my Sticky Studios.

5 Q. Who was there in the studio that day on the day you  
6 recorded "Thinking Out Loud"?

7 A. It was myself and it was my dad, who played piano, and Ed  
8 and a guy called Chris Leonard, who played guitar.

9 Q. So what happens after Ed arrives at the studio that day?  
10 What's the first thing that happens?

11 A. Well, the first thing that happens is Ed would play the  
12 song, just grab a guitar, just go, look, this is what the song  
13 is. Sing it through. It's a very, very fast process. We'd  
14 always work really, really quickly together. So we just  
15 literally -- I would go for record. And a lot of stuff's  
16 looping. So Ed uses his loop pedals. A lot of stuff would be  
17 looped, you know.

18 Q. What did Ed do on the track?

19 A. He did some guitar and he sang it.

20 Q. You testified that there were some other people there in  
21 the studio that day. Your father was one of them. What's your  
22 father's name?

23 A. Peter Gosling.

24 Q. What, if anything, did Peter do on the track?

25 A. He played piano.

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Gosling - Direct

1 Q. You also mentioned someone named Chris Leonard. What, if  
2 anything, did Chris Leonard do on the track?

3 A. Chris -- Chris played guitar, I think some bass, I think  
4 Hammond organ as well.

5 Q. What about you? What, if anything, did you do on the  
6 track?

7 A. I would have done drums, programming, you know, putting it  
8 together, working out with Ed tempos and stuff like that,  
9 recording it.

10 Q. I apologize.

11 A. Sorry.

12 Q. When you recorded "Thinking Out Loud," was each part  
13 recorded one at a time, or did everyone perform together?

14 A. The track would have been recorded separately. It's not  
15 all at the same time.

16 Q. You testified that Ed sang and played guitar on the track.  
17 Did Ed finish his parts the same day that he came into the  
18 studio?

19 A. Yeah.

20 Q. I want to switch gears slightly and ask you, did you listen  
21 to music as a kid growing up?

22 A. I did, yeah.

23 Q. I'm sorry to have to ask you this, but just so we can put a  
24 time frame on it, could you tell us around -- not exactly,  
25 around what year you were born.

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Gosling - Direct

1 A. Around the '70s.

2 Q. So you grew up --

3 A. Check Wikipedia.

4 Q. You grew up in the '80s and '90s?

5 A. I grew up in the '80s and '90s, yeah.

6 Q. What were your earliest memories of listening to the music?

7 A. My parents would listen to stuff, but it was mainly folk

8 music. My parents were into Morris dancing. I don't know if

9 you know what Morris dancing is. Quite embarrassing. A lot of

10 folk stuff and a lot of rock. In the '80s it was also sort of

11 electronic stuff, the Cars or Huey Lewis, whoever it was.

12 Q. Who introduced you to the music that you listened to  
13 growing up?

14 A. Well, my parents did a lot. My friends as well. What was  
15 in the charts, what was going on, bit of Whitney Houston or  
16 whatever it was.

17 Q. Are you familiar with the song "Let's Get It On"?

18 A. Yeah.

19 Q. While you were recording "Thinking Out Loud," did the song  
20 "Let's Get It On" ever cross your mind?

21 A. Not at all, no.

22 Q. Was there any discussion in the studio that day about  
23 "Let's Get It On"?

24 A. Not at all.

25 Q. Was there any discussion about whether "Thinking Out Loud"

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Gosling - Direct

1 reminded anyone of any songs by any other artist?

2 A. No.

3 Q. Did you stop at any point in time during the recording  
4 session to listen to music by anyone else?

5 A. We didn't.

6 Q. When you finished recording "Thinking Out Loud," did you  
7 play the recording back all the way through?

8 A. Yeah, we tended to do that a lot. Once we'd done a song,  
9 we would put it on repeat, like, fair -- constantly. There  
10 were times we would walk back to the studio to my house back  
11 with the song just going, you know.

12 Q. When you listened to it, did "Thinking Out Loud" strike you  
13 as reminiscent of any other song?

14 A. No, not at all.

15 Q. Did there come a point in time when you learned that a  
16 legal claim had been made that "Thinking Out Loud" was copied  
17 from "Let's Get It On"?

18 A. Yeah, I heard about that, yeah.

19 Q. Whenever it was that you learned about that, what was your  
20 reaction?

21 A. I mean, I was completely dumbfounded. I was shocked. I  
22 was sad because, you know, I couldn't believe that -- there's  
23 only a certain amount of chords. Just for all the songwriters  
24 out there, I just felt like how could -- you know, I think  
25 there had been multiple claims from the entire music industry,

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Gosling - Cross

1 which was very, very sad.

2 MR. GOLDSMITH: I have no further questions, your  
3 Honor.

4 THE WITNESS: Thank you.

5 CROSS-EXAMINATION

6 BY MS. VIKER:

7 Q. Good afternoon, Mr. Gosling.

8 A. Good afternoon.

9 Q. I don't have any questions.

10 THE COURT: You're done.

11 THE WITNESS: I can go. Thank you.

12 THE COURT: Thank you, Mr. Gosling.

13 (Witness excused)

14 MS. FARKAS: Your Honor, our next witness, if we could  
15 take just maybe a five- or ten-minute break so we can get the  
16 materials ready for Dr. Ferrara.

17 THE COURT: Sure.

18 MS. FARKAS: Thank you, your Honor.

19 (Recess)

20 (Jury present)

21 MS. FARKAS: Your Honor, the defense calls  
22 Dr. Lawrence Ferrara.

23 LAWRENCE FERRARA,

24 called as a witness by the Defendants,  
25 having been duly sworn, testified as follows:

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Ferrara - Direct

1                   THE WITNESS: Lawrence Ferrara, L-a-w-r-e-n-c-e,  
2 F-e-r-r-a-r-a.

3                   THE DEPUTY CLERK: You may be seated.

4                   THE WITNESS: Thank you.

5 DIRECT EXAMINATION

6 BY MS. FARKAS:

7 Q. Good afternoon, Dr. Ferrara.

8 A. Good afternoon.

9 Q. Dr. Ferrara, where are you currently employed and what is  
10 your title?

11 A. I'm on the full-time faculty at New York University, and my  
12 rank and title are professor of music and director emeritus.

13 Q. Would you mind just moving the microphone maybe a little  
14 closer to you. Yeah, that's good.

15                   What is your role as director, and what is the title  
16 director emeritus?

17 A. For 16 years I oversaw more than 400 faculty. Together we  
18 served more than 1,600 students who were majoring in our  
19 bachelor's, master's and Ph.D. program in the Steinhardt School  
20 at New York University. In the 16th year, I decided that the  
21 following year I would go back to the full-time faculty, and  
22 much to my surprise, the administration gave me the ongoing  
23 honorary title of director emeritus.

24 Q. And you testified that your rank is full professor of  
25 music, is that correct?

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Ferrara - Direct

1 A. That's correct.

2 Q. Are there other faculty ranks in music at New York  
3 University?

4 A. Yes. There are at least two junior ranks, instructor and  
5 assistant professor, and there are at least two senior ranks,  
6 associate professor and professor.

7 Q. And is full professor the highest faculty rank?

8 A. It is.

9 Q. How does one get promoted from associate professor to full  
10 professor at NYU?

11 A. Well, there are many steps and a good amount of material  
12 that needs to be submitted by the applicant. Critical to the  
13 process at New York University is the creation of two  
14 commissions: one commission that is a commission of full  
15 professors across the school that the applicant is applying to  
16 and another commission that is external that is a commission of  
17 also full professors at comparable universities in the United  
18 States and abroad. The -- both commissions are asked to answer  
19 the question: Has this candidate achieved an international  
20 reputation in their area of expertise? The internal commission  
21 is asked to answer another question, and that is: Would this  
22 applicant be promoted to full professor at your institution?

23 Q. And when were you promoted to full professor of music at  
24 NYU?

25 A. Thirty-one years ago, in 1992.

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1 Q. We're going to be handing you a binder of exhibits that  
2 we're going to mark for identification today, and I want you to  
3 only focus on the one that I'm asking you about at any  
4 particular time.

5 So if you can look at what has been marked for  
6 identification as Defendant's Exhibit 237, once you get it, if  
7 you can tell me if you recognize this document.

8 A. Yes. This is my CV.

9 MS. FARKAS: Like to move this exhibit into evidence,  
10 Defendant's 237.

11 MR. FRANK: No objection, your Honor.

12 THE COURT: Received.

13 (Defendant's Exhibit 237 received in evidence)

14 BY MS. FARKAS:

15 Q. What is your particular area of expertise, Dr. Ferrara?

16 A. Music theory and analysis.

17 Q. Are you a member of any organizations pertaining to your  
18 expertise?

19 A. The Society for Music Theory and the American Musicological  
20 Society.

21 Q. Have you written any books or scholarly articles about  
22 music?

23 A. I have authored and coauthored four books.

24 Q. And what are those books about?

25 A. The first book is on harmony and improvisation. It was

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Ferrara - Direct

1 released -- it was published in 1986. The second book was on  
2 music analysis that was published in 1991. The third and  
3 fourth books are fourth and fifth editions of books on research  
4 methods in music. The fourth edition was published in 1993,  
5 and the fifth edition was published in 2005.

6 Q. And approximately how many scholarly articles have you  
7 written?

8 A. In peer review, I would say about nine or ten. In addition  
9 to that, I have a freestanding chapter that I wrote for a book,  
10 and I co-authored an encyclopedia entry as well.

11 Q. Have you presented any peer-reviewed papers on music?

12 A. Yes. Since 2013, between 2013 and 2019, I presented five  
13 peer-reviewed papers at the Greater New York Chapter of the  
14 American Musicological Society.

15 Q. And have you been on any panels regarding scholarly matters  
16 in music?

17 A. I've been on many panels. In the early 2000s, for example,  
18 I chaired a panel at the United Nations on music in a global  
19 context. About three or four years after that, back again at  
20 the United Nations leading another panel, that one on rhythm in  
21 music in multiple cultures. And since then I've been on many,  
22 many panels. I guess most recently, last fall I was on a panel  
23 for the -- actually, not last fall. Since 2013, I've been on  
24 five panels at the American Musicological Society. I've also  
25 been on panels for many organizations, about a year ago a panel

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1 at a conference on technology here in New York City -- that's  
2 what I was thinking of -- and also other panels, including the  
3 Copyright Society of America and many others.

4 Q. Do you currently sit on any editorial boards of any  
5 scholarly journals?

6 A. Yes, I sit on two editorial boards: one of a scholarly  
7 journal in music published by Indiana University Press; the  
8 other, another scholarly journal in music, published by  
9 University of Illinois Press.

10 Q. How long have you been on these editorial boards?

11 A. I've been on the editorial board of Indiana University  
12 Press Journal for about 20 years, and on the editorial board of  
13 the University of Illinois Press for about 15 years.

14 Q. What do editorial board members do?

15 A. We assess articles that have been submitted for  
16 consideration for publication. And when I do that assessment,  
17 I am asked to very carefully go through the article and then,  
18 essentially, to convey to the full editorial board a decision  
19 to (1) accept it as is, to reject it, or to accept it but with  
20 recommendations for change by the editorial board.

21 Q. And so as a member of the editorial board, are you part of  
22 the peer-review process?

23 A. Yes. Indeed, we are the peer-review process.

24 Q. In connection with your publications, have you won any  
25 awards as an author?

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1 A. Yes, I was a recipient of the Daniel Griffith's Award at  
2 New York University. That was in 1996.

3 Q. And what is the Daniel Griffith's award for research?

4 A. There is a cross-school committee of professors who decide,  
5 in their opinion, what the best research publication was for  
6 that year. They give that to one faculty member each year. I  
7 was the recipient of that Griffith's Award in 1996. That was  
8 associated with a publication of mine, research of mine, in --  
9 published by Cambridge University Press in the UK.

10 Q. Do you play any instruments?

11 A. I do. I play the piano. I played bass, stand up and bass  
12 guitar, for years. I played the cello. I even played the  
13 violin for a time when I was in grade school. But,  
14 essentially, I played the piano.

15 Q. And do you have any professional experience with music  
16 copyright claims?

17 A. I do.

18 Q. How many trials have you testified in as an expert witness?

19 A. This is either the ninth or tenth trial over the last 30  
20 years.

21 Q. Are you consulted by record labels or publishers or  
22 songwriters or artists?

23 A. Yes, frequently.

24 Q. Have you been engaged on both plaintiffs and defendants in  
25 music copyright issues?

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Ferrara - Direct

1 A. Yes. To the extent that we're talking about just  
2 litigations in general, not necessarily trials, certainly by  
3 plaintiffs and defendants.

4 Q. Can you please identify some of the artists or composers on  
5 behalf you have provided musical analysis.

6 A. Well, I'm often asked to do musical analyses for any number  
7 of reasons. Over the last 30 years, I have completed music  
8 analyses for Taylor Swift, Katy Perry, for Elton John, Paul  
9 McCartney, Bruce Springsteen, Billy Joel, Andrew Lloyd Webber,  
10 Cardi B, Megan Thee Stallion, Luis Fonsi, Drake, Dr. Dre,  
11 Eminem, Luther Vandross -- I could go on.

12 Q. Would it be fair to say, and many others?

13 A. Lin-Manuel Miranda; Mariah Carey; Nicki Minaj; James Brown,  
14 Michael Jackson; in fact, Janet Jackson as well on a separate  
15 issue; and The Weeknd; Prince; Pink. Many others, as well as  
16 many musical groups, for example, Led Zeppelin, U2, Maroon 5,  
17 Beastie Boys, and Jonas Brothers, the Black Eyed Peas. I could  
18 go on and on.

19 Q. One more area of information about your expertise. Have  
20 you given any lectures regarding the analysis of music in the  
21 context of copyright infringement?

22 A. Yes, many certainly over the last 30 years. Over a period  
23 of about 15 years, I gave approximately nine or ten  
24 presentations at Columbia University Law School. I have very  
25 recently, for example, last fall I gave a presentation on

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Ferrara - Direct

1 musicology in music copyright matters for the Los Angeles  
2 Copyright Society. The year before by Zoom, in the fall of  
3 2021, I gave a Zoom lecture invited by the International Legal  
4 Affairs staff at Netflix, which I did. And just to wrap it up,  
5 every year for the last 13 years, the 13th being just last  
6 January, I have given an invited lecture at Harvard Law School.

7 Q. Have you been qualified to testify as an expert in other  
8 music copyright infringement cases?

9 A. Yes, I have.

10 Q. And when you are engaged by a party in a lawsuit, do you  
11 consider yourself an employee of that party?

12 A. No, not at all. I consider myself an independent  
13 musicologist.

14 Q. After someone has engaged your musical services and  
15 you complete your analysis, do you sometimes give them bad  
16 news?

17 A. Yes, frequently. Sometimes I can be called by a potential  
18 plaintiff or a potential defendant, and after I've done  
19 analysis and transcriptions and research, I often come back and  
20 say that what I found is that the musical evidence does  
21 not support their position. I guess you would consider that  
22 bad news.

23 Q. And does that tend to turn off organizations and people in  
24 the music industry and lead them not to call on you again?

25 A. Actually, it's just the opposite. Because of that

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Ferrara - Direct

1 reputation of being objective and honest and fair, I think that  
2 is the reason why I receive so many requests for analyses.

3 MS. FARKAS: Your Honor, at this time I'd like to  
4 tender Dr. Ferrara as an expert in the field of musicology.

5 THE COURT: That's something that used to happen with  
6 every expert, but basically a generation ago the tendering of  
7 an expert asks the Court to guarantee that every answer that  
8 this witness gives to whatever question he's asked is going to  
9 be the perfect answer, and that's rather aggressive. The test  
10 really is, is he qualified to answer the questions that are put  
11 to him, and that is something for you to decide.

12 BY MS. FARKAS:

13 Q. Dr. Ferrara, did you perform an analysis of the two songs  
14 that are at issue in this case?

15 A. Yes, I did.

16 Q. And if it's OK with you, at some times I'm going to refer  
17 to the song "Let's Get It On" as LGO and "Thinking Out Loud" as  
18 the initials TOL. Is that OK with you?

19 A. It is.

20 Q. Now, we'll go through this in detail, but at a very high  
21 level, what is your opinion as to whether "Thinking Out Loud"  
22 copied from "Let's Get It On"?

23 A. It's my very strong opinion that the writers of "Thinking  
24 Out Loud" did not copy LGO, and I found no musicalological  
25 evidence to support a claim of copying.

N51HGri3

Ferrara - Direct

1 Q. The plaintiffs have identified alleged similarities with  
2 respect to the chord progressions, the harmonic rhythm, and  
3 claimed melodies. At a high level, what is your opinion  
4 regarding the claimed similarities between the chord  
5 progressions?

6 A. The chord progressions were in common use prior to the  
7 creation of LGO in 1973, and as a result, there's no  
8 musicological evidence of copying.

9                 The harmonic rhythms/anticipation speak to the use of  
10 anticipation, and that is, of course, a musical building block.  
11 It has been for centuries. So I found it absolutely  
12 unremarkable that the chord progression or the chord  
13 progressions, because they're not the same in the two works,  
14 that the chord progressions would also include anticipation.

15                 Finally, with respect to the melodies, the idea of  
16 particularly that melody A in the two works have similarities  
17 is, to be perfectly honest, absurd. They are so dramatically  
18 different, and so I don't find any -- any help for the  
19 plaintiffs' case with respect to the melodies. Melodies B and  
20 C have very thin, very fragmentary similarities, but they also  
21 have no significant similarities. So I have found that the  
22 melodies at issue are simply, in terms of being similar,  
23 nonexistent.

24 Q. And just to circle back on a few points that I think you  
25 touched upon, the basic chord progression, is the basic chord

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Ferrara - Direct

1 progression in LGO identical to the basic chord progression in  
2 "Thinking Out Loud"?

3 A. It is not.

4 Q. Is the harmonic rhythm and anticipation in "Let's Get It  
5 On" identical, or virtually identical, to the harmonic rhythm  
6 and anticipation in "Thinking Out Loud"?

7 A. It is not.

8 Q. Do you know whether Ed Sheeran used anticipation in songs  
9 that he authored before "Thinking Out Loud"?

10 A. Yes, he did. In at least 20 songs that I reviewed, he used  
11 anticipation in his earlier works. It's part of his stock and  
12 trade.

13 Q. Did you find any musicological evidence of copying with  
14 respect to the purported melodies that Dr. Stewart has placed  
15 in issue?

16 A. No. Once again, it's really rather remarkable that they  
17 were put in as part of an issue.

18 Q. The plaintiffs have emphasized the combination of the chord  
19 progression and harmonic rhythm and claimed melodies in the two  
20 songs. At a high level, what is your opinion regarding the  
21 claimed similarities between the combination of elements in  
22 each song?

23 A. Once again, starting with the pieces and then talking about  
24 the combination, so the chord progression was already  
25 commonplace prior to the creation of LGO. That's a fact, and I

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Ferrara - Direct

1 believe that Dr. Stewart testified to that in his deposition.  
2 So the chord progressions -- sorry.

3 The chord progression is -- was commonplace and is a  
4 musical building block. That is, the basic chord progression  
5 we're talking about, was a musical building block before LGO  
6 was created.

7 The use of anticipation, specifically, on the second  
8 and fourth chord, which we're going to get to, is something  
9 also unremarkable. In fact, as you will hear later, I found  
10 several songs that predate LGO that do the same thing, that is,  
11 that incorporate this combination.

12 Now, the third element, that's melody, well, the  
13 melodies are distinctly different. So when you add the melody  
14 to that combination, it actually makes the combination more  
15 different. It doesn't help. It detracts.

16 Q. Just to be clear, is the combination of the chord  
17 progression, anticipation, and melody in "Let's Get It On"  
18 identical or virtually identical to the combination of those  
19 elements in "Thinking Out Loud"?

20 A. That combination in LGO and TOL is not remotely virtually  
21 identical or identical.

22 Q. I want to direct your attention to Dr. Stewart's testimony  
23 where he testified that 70 percent of the "value of" "Thinking  
24 Out Loud" is supposedly attributable to "Let's Get It On." Do  
25 you have a response to that testimony?

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Ferrara - Direct

1 A. I think it's ridiculous. First, the lyrics in a song are a  
2 very important component, and they certainly are very component  
3 in "Thinking Out Loud." The lyrics are off the table. The  
4 lyrics are not at issue. So what is left? The melodies? The  
5 melodies are distinctly different and not all of the melodies  
6 have been put in issue, but the melodies that have been put in  
7 issue are different.

8 So we now -- I'm sorry. We now move to the chord  
9 progression and the harmonic rhythm. As I've already  
10 mentioned, I don't find any notable -- any meaningful  
11 similarity, but when you take into consideration that there are  
12 sections of "Thinking Out Loud" that are not at issue and the  
13 lyrics are off the table, it seems to me that 70 percent is  
14 outlandish.

15 (Continued on next page)

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N511GRI4

Ferrara - Direct

1 BY MS. FARKAS:

2 Q. Let's project what has been stipulated into evidence as  
3 Joint Exhibit 2 on the screen. Do you recognize this document?

4 A. Yes. This is the deposit copy of "Let's Get It On."

5 Q. And did you consider Joint Exhibit 2 in completing your  
6 analysis?

7 A. I did, yes.

8 Q. Let's take a look on your screen what has been marked for  
9 identification as Defendant's Exhibit 200. Do you recognize  
10 this document?

11 A. I do. This is a copy of the deposit copy of "Let's Get It  
12 On," but I have handwritten notes on it, for example, the  
13 verse, of course, so forth, and that's followed on page 6 of  
14 this exhibit, it's followed by a reproduction of the deposit  
15 copy, and then followed by another reproduction that I created  
16 that transposes the deposit copy from the key of E flat major  
17 to the key of D major.

18 MS. FARKAS: Your Honor, I'd like to move Exhibit 200  
19 into evidence.

20 MR. FRANK: We object, your Honor, based on the  
21 alterations made by Dr. Ferrara.

22 MS. FARKAS: Your Honor, if I may, there are no  
23 alterations. He simply designated the structural sections of  
24 the song and then basically wrote it in more legible font and  
25 then transposed it into the key of D, which is what both

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Ferrara - Direct

1 experts have done.

2 MR. FRANK: He superimposed his own comments over the  
3 deposit copy.

4 THE COURT: Are the alterations made by Dr. Ferrara  
5 identifiable?

6 MR. FRANK: Not really, your Honor. I don't think  
7 that they are.

8 MS. FARKAS: I don't think they disagree with the  
9 actual substance of the notations. I think they just don't  
10 want him to have any notations on it, unless I'm wrong. If you  
11 want to identify what you have a problem with.

12 MR. FRANK: I just don't think it's appropriate to  
13 enter into evidence a document that's been altered by — that's  
14 been written over by Dr. Ferrara and alters it.

15 THE COURT: I think the matter of your agreement or  
16 disagreement with the exhibit is one of argument for the jury  
17 and doesn't prevent it from being put into evidence. Evidence  
18 can be challenged, of course. It doesn't require a guarantee  
19 of absolute truth to be received as evidence.

20 MR. FRANK: Yes, your Honor. Thank you.

21 (Defendant's Exhibit 200 received in evidence)

22 BY MS. FARKAS:

23 Q. We're going to address the meaning of "key" shortly, but  
24 for now, what is a transposed transcription?

25 A. When comparing, doing the analysis of two songs that are in

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Ferrara - Direct

1 different keys, it's common musicological practice to place  
2 them in the same key. When you do that, when you transpose the  
3 music of one key to another, all of the pitch relationships,  
4 all of the harmonic relationships, remain intact. And so in  
5 this case I transposed the "Let's Get It On" key of E flat  
6 major to the key of TOL, "Thinking Out Loud," the key of D  
7 major.

8 Q. Did Dr. Stewart transpose "Let's Get It On" into the same  
9 key as "Thinking Out Loud"?

10 A. Yes, we both transcribed "Let's Get It On" into the key of  
11 D major.

12 Q. And did you consider Exhibit 200 in completing your  
13 analysis?

14 A. Yes, I did.

15 Q. Let's project what has been designated and stipulated into  
16 evidence as Joint Exhibit 4.

17 Do you recognize this document?

18 A. I do. It's the published sheet music of "Thinking Out  
19 Loud."

20 Q. And did you consider Joint Exhibit 4 in completing your  
21 analysis?

22 A. Yes, I did.

23 Q. Did you consider Joint Exhibit 3, the sound recording of  
24 "Thinking Out Loud," in your analysis?

25 A. Yes, I did.

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Ferrara - Direct

1 Q. And in performing your analysis in this case did you also  
2 play the music at issue in "Let's Get It On" and "Thinking Out  
3 Loud" at the piano?

4 A. I'm sorry. Could you say that again.

5 Q. Sure. In performing your analysis in this case, did you  
6 play the music at issue in "Let's Get It On" and "Thinking Out  
7 Loud" at the piano?

8 A. Yes, I did.

9 MS. FARKAS: Your Honor, I feel like we're at a  
10 breaking point in his testimony, if it would be okay with you  
11 to break at this point.

12 THE COURT: Good. We will resume at the normal 11:00  
13 tomorrow morning. Keep an open mind, and don't discuss it with  
14 anybody.

15 (Adjourned to May 2, 2023, at 11:00 a.m.)

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